

[Submitting Counsel below]

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

IN RE: BABY FOOD PRODUCTS
LIABILITY LITIGATION

This Document relates to:

Watkins, et. al v. Nurture, LLC, et al.
Case No. 3:24-cv-02832-JSC

Case no. 24-MD-3101-JSC

MDL 3101

Hon. Jacqueline Scott Corley

THIRD AMENDED PETITION

INTRODUCTION

1. This case involves two manufacturers, Hain Celestial Group, Inc. and Nurture, LLC (collectively “Defendant Baby Food Manufacturers,” or “Manufacturer Defendants”) and two retailers that *knowingly* sold baby food products (“Baby Foods”) which contain dangerous levels of toxic heavy metals—mercury,¹ lead, arsenic, and cadmium (collectively “Toxic Heavy Metals”), which are all known to be severe neurotoxins—and how such toxic exposures caused or substantially contributed to Plaintiff developing lifelong brain damage and neurodevelopmental disorders. The products of these Baby Food Manufacturers were retailed by Amazon.com Services, LLC and Whole Food Market Services, Inc. (collectively “Retailer Defendants”). The four

¹ To be clear, the type of organic mercury at issue here is methylmercury found in food, not ethylmercury contained in the thimerosal vaccine. Ethylmercury is rapidly excreted from the body and is not considered as toxic as methylmercury. Ethylmercury and vaccines are irrelevant to this litigation.

Defendants are collectively referred to as “Defendants.” Plaintiff JMW (“Plaintiff”), represented in this lawsuit by his parents and guardians *ad litem*, is a five-year-old boy who lives with several neurological and cognitive injuries, including lowered IQ and debilitating Autism Spectrum Disorder (“ASD”) because he consumed poisonous Baby Foods manufactured, marketed, and sold by these Defendants. This case seeks to hold the Defendants accountable for their reprehensible conduct and ensure they are punished for permanently affecting Plaintiff’s ability to live a fulfilling life.

2. That Defendants’ Baby Foods are contaminated with staggering amounts of Toxic Heavy Metals recently made headlines following research and a Congressional investigation. In February 2021, the U.S. House of Representatives’ Subcommittee on Economic and Consumer Policy, Committee on Oversight and Reform, released a report containing shocking details of Defendants’ tainted Baby Foods based on the submission of internal test results and company documents. Specifically, the Subcommittee found that Defendants sold Baby Foods containing as much as 180 parts per billion (“ppb”)² inorganic arsenic, 641 ppb lead, and 10 ppb mercury, and manufacture their Baby Foods using ingredients containing as much as 913.4 ppb arsenic and 886.9 ppb lead, far eclipsing domestic and international regulatory standards. By way of comparison, the U.S. Food and Drug Administration (“FDA”) has set the maximum allowable levels in bottled water at 10 ppb inorganic arsenic and 5 ppb lead, and the U.S. Environmental Protection Agency (“EPA”) has capped the allowable level of mercury in drinking water at 2 ppb. With a chilling note the Subcommittee concluded that “[m]anufacturers *knowingly* sell these products to unsuspecting parents, in spite of internal company standards and test results, and without any warning labeling whatsoever.”³

3. The high levels of Toxic Heavy Metals found in Defendants’ Baby Foods are, in

² Ppb (or ppb) is used to measure the concentration of a contaminant in soils, sediments, and water. 1 ppb equals 1 µg (microgram) of substance per kg of solid (µg/kg). For the average baby weighing approximately 3kg, the quantities of Toxic Heavy Metals found in Defendants’ Baby Foods, as explained below, pose significant health risks.

³ Staff Report, Subcommittee on Economic and Consumer Policy Committee on Oversight and Reform U.S. House of Representatives, *Baby Foods Are Tainted with Dangerous Levels of Arsenic, Lead, Cadmium, and Mercury* (Feb. 4, 2021) (“Subcommittee Report”) at 59 (emphasis added).

1 part, a function of the ingredients used by Defendants to manufacture their Baby Foods, the setting
2 of dangerously inflated internal limits which Defendants willingly flouted, disregard of regulatory
3 standards, and corporate policies which failed to test finished products before market distribution,
4 purchase by unknowing parents, and consumption by vulnerable infants.

5 4. Defendants' malicious recklessness and callous disregard for human life has
6 wreaked havoc on the health of countless vulnerable children, all so that Defendants could
7 maximize profits while deliberately misleading parents regarding the safety of the Baby Foods
8 they manufactured and sold. Accordingly, this lawsuit will not only ensure that Plaintiff is duly
9 compensated for his tragic injuries and Defendants punished, but that future generations are
10 protected from the poisonous products that Defendants pander as "food."

11 Parties

12 **A. Plaintiff**

13 5. Plaintiff is a citizen of Louisiana and no other state and currently resides in New
14 Orleans, Louisiana. Defendants' Baby Foods consumed by Plaintiff were purchased in New
15 Orleans, Louisiana and consumed by Plaintiff in New Orleans, Louisiana.

16 **B. Defendants**

17 6. Defendant Hain Celestial Group, Inc. ("Hain") is a citizen of Delaware and
18 Colorado with its principal place of business in Boulder, Colorado. Hain sells Baby Foods under
19 the brand name Earth's Best Organics. Hain offers infant and baby formula and foods as well as
20 toddler foods covering products from "organic infant cereal" to "organic snacks for toddlers and
21 kids on the go." At all relevant times, Hain has conducted business and derived substantial revenue
22 from its manufacturing, advertising, distributing, selling, and marketing of Baby Foods within the
23 State of Louisiana and Orleans Parish.

24 7. Defendant Nurture, LLC ("Nurture") is a Delaware limited liability company.
25 Nurture owns Happy Family Brands (including Happy Family Organics) and sells Baby Foods
26 under the brand name HappyBaby. Nurture classifies its Happy Baby range of products according
27 to three categories: "baby," "tot," and "mama." The "baby" category is comprised of foods,
28 including "starting solids," intended for age groups 0-7+ months, the "tot" category covers 12+

1 months, and “mama” includes infant formulas for newborn babies. At all relevant times, Nurture
2 has conducted business and derived substantial revenue from its manufacturing, advertising,
3 distributing, selling, and marketing of HappyBaby within the State of Louisiana and Orleans
4 Parish.

5 8. Defendant Whole Food Market Services, Inc. (“Whole Foods”) is a Texas
6 corporation with its principal place of business in Austin, Texas. At all relevant times, Whole
7 Foods retailed the Manufacturer Defendants’ Baby Foods online and at its stores throughout
8 Louisiana. At all relevant times, Whole Foods has conducted business and derived substantial
9 revenue from its retailing of Baby Foods within the State of Louisiana and Orleans Parish. Whole
10 Foods is a wholly owned subsidiary of Amazon.

11 9. Defendant Amazon.com Services LLC (“Amazon”) is a limited liability company
12 organized under the laws of Delaware and having its principal place of business in the State of
13 Washington. The sole member of Amazon.com Services LLC is Amazon.com Sales, Inc., which
14 is a Delaware corporation having its principal place of business in the State of Washington.
15 Amazon is authorized to and doing business in Orleans Parish and the State of Louisiana. At all
16 relevant times, Amazon has conducted business and derived substantial revenue from its
17 manufacturing, advertising, distributing, selling, and marketing of Baby Foods within the State of
18 Louisiana and Orleans Parish.

19 10. The true names and/or capacities, whether individual, corporate, partnership,
20 associate, governmental, or otherwise, of Defendants DOES 1 through 100, inclusive, and each of
21 them, are unknown to Plaintiff at this time, who therefore sue said Defendants by such fictitious
22 names. Plaintiff is informed and believes, and thereon alleges, that each Defendant designated
23 herein as a DOE caused injuries and damages proximately thereby to Plaintiff as hereinafter
24 alleged; and that each DOE Defendant is liable to the Plaintiff for the acts and omissions alleged
25 herein below, and the resulting injuries to Plaintiff, and damages sustained by Plaintiff. Plaintiff
26 will amend this Complaint to allege the true names and capacities of said DOE Defendants when
27 that same is ascertained. At all relevant times, Defendants and DOES 1 through 100, inclusive,
28 and each of them, expected or should have expected that their acts would have consequences within
the United States of America including the State of Louisiana and including Orleans Parish, and

1 said Defendants derived and derive substantial revenue therefrom.

2
3 **JURISDICTION AND VENUE**

4 11. Plaintiff originally filed this case in the Orleans Civil District Court in Orleans
5 Parish, Louisiana. Venue is proper in that court under La. C.C.P. art. 74 because a substantial part
6 of the events or omissions giving rise to this claim occurred in Orleans Parish, Louisiana, and
7 because the damages sustained as a result of tortious and wrongful conduct complained of herein
8 were sustained in Orleans Parish, Louisiana.

9 12. A Louisiana Court's exercise of personal jurisdiction over these Defendants is
10 proper under La. R.S. § 13:3201 because Defendants have sufficient minimum contacts with the
11 State of Louisiana and intentionally availed themselves of the market within Louisiana through
12 the promotion, sale, marketing, and distribution of their products. Additionally, Defendants caused
13 tortious injury by acts and omissions in this judicial jurisdiction and caused tortious injury in this
14 jurisdiction by acts and omissions outside this jurisdiction while regularly doing and soliciting
15 business, engaging in a persistent course of conduct, and deriving substantial revenue from goods
16 used or co-owned and services rendered in this jurisdiction.

17 13. On March 4, 2022, Defendants removed this case to the United States District Court
18 for the Eastern District of Louisiana, alleging diversity jurisdiction. Plaintiff thereafter moved to
19 remand. The District Court denied that motion on March 22, 2024, without issuing reasons for the
20 denial. Plaintiff files this Second Amended Petition without waiving any future right to seek
21 remand to the Orleans Civil District Court in Orleans Parish, Louisiana.

22 **FACTUAL ALLEGATIONS**

23
24 **I. Rising Concerns Regarding the Presence of Toxic Heavy Metals in Baby**
25 **Foods.**

26 14. In October 2019, an alliance of nonprofit organizations, scientists and donors
27 named "Happy Babies Bright Futures" ("HBBF"), dedicated to designing and implementing
28

“outcomes- based programs to measurably reduce babies’ exposures to toxic chemicals,”⁴ published a report investigating the presence of Toxic Heavy Metals in baby foods.⁵ The HBBF Report tested 168 different baby foods sold on the U.S. market and concluded that “[n]inety-five percent of baby foods tested were contaminated with one or more of four toxic heavy metals—arsenic, lead, cadmium and mercury. All but nine of 168 baby foods contained at least one metal; most contained more than one.”⁶ Specifically, the HBBF report identified “puffs and other snacks made with rice flour,” “[t]eething biscuits and rice rusks,” “infant rice cereal,” “apple, pear, grape and other fruit juices,” and “carrots and sweet potatoes” manufactured by the Defendant Baby Food Companies as particularly high in Toxic Heavy Metals.⁷

15. The results of the HBBF report were consistent with that of the FDA which had, in 2017, detected one or more of the four Toxic Heavy Metals in 33 of 39 types of baby food tested.⁸ However, the HBBF reported that “[f]or 88 percent of baby foods tested by HBBF—148 of 168 baby foods—FDA has failed to set enforceable limits or issue guidance on maximum safe amounts.”⁹ The HBBF’s findings were by no means an outlier. Eight months prior to publication of the HBBF report, a study conducted by scientists at the University of Miami and the Clean Label Project “examined lead and cadmium concentrations in a large convenience sample of US baby foods.”¹⁰ The study detected lead in 37% of samples, and cadmium in 57%.¹¹ This was consistent with findings by researchers examining baby food products in other parts of the world.

⁴ <https://www.hbbf.org/solutions>.

⁵ Healthy Babies Bright Futures, *What’s in My Baby’s Food? A National Investigation Finds 95 Percent of Baby Foods Tested Contain Toxic Chemicals That Lower Babies’ IQ, Including Arsenic and Lead* (Oct. 2019) (“HBBF Report”), available at: [www.healthybabyfood.org/sites/healthybabyfoods.org/files/2019-10/BabyFoodReportFULLREPORT ENGLISH R5b.pdf](http://www.healthybabyfood.org/sites/healthybabyfoods.org/files/2019-10/BabyFoodReportFULLREPORT%20ENGLISH%20R5b.pdf).

⁶ *Id.* at 6.

⁷ *Id.* at 10-11.

⁸ *Id.* at 6.

⁹ *Id.* at 6.

¹⁰ Gardener, et al., *Lead and cadmium contamination in a large sample of United States infant formulas and baby foods*, 651 SCI.TOTAL ENVIRON. 1, 822-827 (2019), available at:

<https://www.sciencedirect.com/science/article/abs/pii/S0048969718334442?via%3Dihub>.

¹¹ *Id.*

II. Congressional Investigation Finds Substantial Presence of Heavy Metals in Baby Foods, Sparking National Outrage.

16. On February 4, 2021, the U.S. House of Representatives’ Subcommittee on Economic and Consumer Policy, Committee on Oversight and Reform, published a report detailing its findings that Toxic Heavy Metals—including arsenic, lead, and mercury—were present in “significant levels” in numerous commercial baby food products.¹²

17. The Subcommittee reported that the data submitted by the companies unequivocally revealed that a substantial number of Defendants’ finished products and/or ingredients used to manufacture the Baby Foods are tainted with significant levels of Toxic Heavy Metals, namely inorganic arsenic, lead, and mercury.¹³

18. Specifically, the Congressional committee concluded that arsenic was present in baby foods. Nurture (Happy BABY) sold baby foods after tests showed they contained as much as 180 parts per billion (ppb) inorganic arsenic. Over 25% of the products Nurture tested before sale contained over 100 ppb inorganic arsenic. Nurture’s testing shows that the typical baby food product it sold contained 60 ppb inorganic arsenic. Hain (Earth’s Best Organic) sold finished baby food products containing as much as 129 ppb inorganic arsenic. Hain typically only tested its ingredients, not finished products. Documents show that Hain used ingredients testing as high as 309 ppb arsenic.

19. Lead was present in baby foods made by all responding companies. Nurture (Happy BABY) knowingly sold finished baby food products that tested as high as 641 ppb lead. Almost 20% of the finished baby food products that Nurture tested contained over 10 ppb lead. Hain (Earth’s Best Organic) used ingredients containing as much as 352 ppb lead. Hain used many ingredients with high lead content, including 88 that tested over 20 ppb lead and six that tested over 200 ppb lead.

20. Moreover, Nurture (Happy BABY) sold finished baby food products containing as

¹² See generally Subcommittee Rpt.

¹³ *Id.* at 2-3.

1 much as 10 ppb mercury. Hain (Earth’s Best Organic) does not test for mercury in baby food.¹⁴
2 However, independent testing by HBBF of Hain’s Baby Foods confirm that Hain’s products
3 contain as much as 2.4 ppb of mercury.¹⁵

4 21. These levels greatly surpass the limits allowed by U.S. regulatory agencies. Upon
5 information and belief, there were no FDA regulations governing the presence of Toxic Heavy
6 Metals in Baby Foods specifically (with the exception of infant rice cereal) during the time that
7 JMW was consuming Baby Foods; to the extent such regulations existed, the quantities of Toxic
8 Heavy Metals in Defendants’ Baby Foods far exceed any permissible FDA levels. To be sure, the
9 FDA has set the maximum contaminant levels (“MCL”) in bottled water at 10 ppb inorganic
10 arsenic and 5 ppb lead, and the EPA has capped the allowable level of mercury in drinking water
11 at 2 ppb. However, these limits were created in reference to adult exposure, not infants. Compared
12 to these thresholds, the test results of the Defendants’ Baby Foods and their ingredients are 91
13 times greater than permitted arsenic levels, 177 times greater than permitted lead levels, and 5
14 times greater than permitted mercury levels.

15 22. Moreover, compounding these troubling findings, the Manufacturer Defendants set
16 internal limits for the presence of Toxic Heavy Metals in their foods that were, themselves,
17 dangerously high and then routinely failed to abide by those inadequate standards, as discussed
18 below. For example, the Subcommittee found that Hain (Earth’s Best Organic) set an internal
19 standard of 200 ppb for arsenic and lead in some of its ingredients. But Hain routinely exceeded
20 its internal policies, using ingredients containing 353 ppb lead and 309 ppb arsenic. Hain justified
21 these deviations based on “theoretical calculations,” even after Hain admitted to FDA that its
22 testing underestimated final product toxic heavy metal levels.¹⁶

23 23. As found by the Subcommittee, the Defendants have willfully sold—and continue
24 to sell—contaminated Baby Foods notwithstanding their full awareness of these unacceptably high
25 levels of Toxic Heavy Metals in their products. In August 2019, Hain held a closed-door meeting

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27 ¹⁴ *Id.* at 2-4.

28 ¹⁵ *See* HBBF Rpt. at 19.

¹⁶ *Id.* at 4-5.

1 with the FDA during which Hain delivered a presentation to the agency acknowledging the Toxic
 2 Heavy Metal problem in its Baby Food.¹⁷ In the PowerPoint slides presented during the meeting—
 3 only made public by the Subcommittee—Hain confirmed that some of the ingredients in its Baby
 4 Food contain as much as between 108 to 129 ppb of arsenic, specifically noting “[p]reliminary
 5 investigation indicates Vitamin/Mineral Pre-Mix may be a major contributing factor.”¹⁸

6 24. Discovery will flesh out in greater detail the extent of Toxic Heavy Metals in the
 7 Baby Food sold by Defendants.

8 25. At all times relevant to this litigation, the quantity of Toxic Heavy Metals in
 9 Defendants’ Baby Foods was sufficient to cause neurological injury and/or exacerbate underlying
 10 neurological conditions injuries and/or act together with other factors to cause or exacerbate
 11 underlying neurological conditions or injuries to result in injuries that include cognitive
 12 impairment, lowered IQ, and a diagnosis of autism spectrum disorder.

13 **III. Dangers of Toxic Heavy Metals to Babies and Children.**

14 26. According to the World Health Organization (“WHO”), Toxic Heavy Metals,
 15 specifically arsenic, lead, and mercury, pose a “major public health concern” for children.¹⁹ The
 16 Occupational Safety and Health Administration (“OSHA”) has warned that these metals “may
 17 build up in biological systems and become a significant health hazard.”²⁰ Indeed, the Department
 18 of Health and Human Services’ Agency for Toxic Substances and Disease Registry (“ATSDR”)
 19 ranks arsenic as number one among substances present in the environment that pose the most
 20 significant potential threat to human health, followed by lead (second), and mercury (third).²¹

21 27. The threat presented by Toxic Heavy Metals to children’s health is widely shared
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 24
 25 ¹⁷ Hain, *PowerPoint Presentation to Food and Drug Administration: FDA Testing Result Investigation* (Aug. 1,
 26 2019) (“2019 Hain & FDA Meeting”), available at:

<https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2.pdf>.

¹⁸ *Id.* at *9.

¹⁹ World Health Organization, *Children’s Health and the Environment WHO training Package for the Health Sector*
 27 (October 2011), available at: https://www.who.int/ceh/capacity/heavy_metals.txl.

²⁰ OSHA, *Toxic Metals*, available at: <https://www.osha.gov/toxic-metals>.

²¹ ATSDR, *ATSDR’s Substance Priority List* (2019), available at: www.atsdr.cdc.gov/spl/index.html#2019spl.

by the global scientific community. As one recent study observed, “[t]he implications of heavy metals with regards to children’s health have been noted to be more severe compared to adults. The elements’ harmful consequences on children health include mental retardation, neurocognitive disorders, behavioral disorders, respiratory problems, cancer and cardiovascular diseases. Much attention should be given to heavy metals because of their high toxicity potential, widespread use, and prevalence.”²² Children and, even more so, babies have higher exposure to metals compared to adults because they consume more food in relation to their body weight and absorb metals more readily than adults by 40 to 90%.²³ And, the mechanisms needed to metabolize and eliminate heavy metals are comparatively undeveloped in childhood, with babies having weaker detoxifying mechanisms and poorer immune systems than adults.²⁴ For example, liver pathways that in adulthood metabolize absorbed arsenic do not mature until mid-childhood; un-excreted arsenic thus continues to circulate and is deposited in other organs.²⁵ According to Linda McCauley, Dean of the Nell Hodgson Woodruff School of Nursing at Emory University, who studies environmental health effects, “[n]o level of exposure to these [heavy] metals has been shown to be safe in vulnerable infants.”²⁶ Thus, “the major windows of developmental vulnerability occur during infancy and early childhood due to continuing brain development after birth.”²⁷ In short, even small amounts of exposure to Toxic Heavy Metals can have devastating health outcomes for babies and children.

28. Toxic Heavy Metals can have these devastating health outcomes for babies and children regardless of the method or route of exposure. Nothing about the baby food products

²² Osman, et al., *Exposure routes and health effects of heavy metals on children*, 32 BIOMET ALS 563-573 (2019), available at: https://link.springer.com/article/10.1007%2Fsl_0534-019-00193-S#citeas.

²³ Stein, et al., *In harm’s way: toxic threats to child development*, 23 J DEVBEHAVPEDIATR. 1 S13-S22 (2002).

²⁴ Gorini, et al., *The Role of Heavy Metal Pollution in Neurobehavioral Disorders: A Focus on Autism*, 1 REV. J. AUTISM DEV. DISORD. 1, 354-372 (2014), available at: <https://link.springer.com/article/10.1007/s40489-014-0028-3>.

²⁵ Del Rio, et al., *A comparison of arsenic exposure in young children and home water arsenic in two rural West Texas communities*, 17 BMC PUBLIC HEALTH 850 1-13 (2017), available at: <https://bmcpublihealth.biomedcentral.com/articles/10.1186/s12889-017-4808-4>.

²⁶ Roni Caryn Rabin, *Some Baby Food May Contain Toxic Metals*, *US Reports* (NY TIMES, Feb 4. 2021), available at: <https://www.nytimes.com/2021/02/04/health/baby-food-metals-arsenic.html>

²⁷ Gorini, et al. *supra*.

1 manufactured and sold by Defendants or the nutrients or ingredients that may be contained therein
 2 are sufficient to blunt, ameliorate, inhibit, or prevent the ill effects that exposure to Toxic Heavy
 3 Metals can have on babies and children.

4
 5 **A. Exposure to Toxic Heavy Metals Has Been Consistently Associated with Autism**
 6 **in Pediatric Populations**

7 29. A chorus of regulators, research agencies and independent scientists are in broad
 8 agreement that exposure to heavy metals in early life is causally associated with ASD. The Centers
 9 for Disease Control (“CDC”) in its toxicological profile of lead specifically observes that
 10 “neurodevelopmental effects in children have been associated with [lead]” at different quantities
 11 of exposure.²⁸ At doses of <10 µg/dL²⁹,²⁹ the agency observed “[a]ltered mood and behaviors that
 12 may contribute to learning deficits, including attention deficits, hyperactivity, *autistic behaviors*,
 13 conduct disorders, and delinquency.”³⁰ The U.S. National Institute of Health (“NIH”) concurs,
 14 noting that “[p]renatal and early childhood exposure to heavy metals...may be linked to autism
 15 spectrum disorder.”³¹ And, in July 2016, a large consortium consisting of the world’s leading
 16 epidemiologists, autism experts, and medical organizations published a consensus statement which
 17 identified heavy metals such as lead and mercury as “*prime examples* of toxic chemicals that can
 18 contribute to...autism spectrum disorder[.]”³²

19 30. Such conclusions are based upon a substantial body of independent, peer-reviewed
 20 research conducted throughout various parts of the world over the last decade which has
 21 consistently observed a positive association between exposure to Toxic Heavy Metals and the
 22 development of ASD in children and infant populations. The literature is comprised of prospective

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 25 ²⁸ ATSDR Toxicological Profile for Lead at 133, available at: <https://www.atsdr.cdc.gov/toxprofiles/tp13.pdf>.

26 ²⁹ This means effects observed at less than ten micrograms of lead per blood liter.

27 ³⁰ *Id.* (emphasis added).

28 ³¹ NIH, *Autism Spectrum Disorder and the Environment* (April 2019), available at:

https://www.niehs.nih.gov/health/materials/autism_spectrum_disorder_and_the_environment_508.pdf

³² Bennett, et al., *Project TENDR: Targeting Environmental Neuro-Developmental Risks The TENDR Consensus Statement* 124 ENVIRON. HEALTH. PERSPECT. 7 A118-A122 (2016), available at: <HTTPS://WWW.NCBI.NLM.NIH.GOV/PMC/ARTICLES/PMC4937840/>. (emphasis added).

cohort studies where children's metal exposure is measured in early life and their risk of subsequently developing ASD evaluated; pre-natal studies where pregnant mothers' metal exposure is measured prior to assessing the risk of ASD in later born children; case-control and cross-sectional studies where children's metal exposure is measured contemporaneous with ASD diagnoses; as well as meta-analyses where individual studies are grouped together to derive an overall picture of the data.

31. Repeatedly, the different study types evince a strong association between metal exposure and ASD risk. For example, a 2017 NIH-funded study of twins concluded that "prenatal and early childhood disruption (excess or deficiency) of multiple metals during critical developmental windows is associated with ASD...[and] increases ASD risk and severity"³³ Similarly, a 2019 study and a 2021 study of metal exposure in pregnant mothers and the risk of subsequent ASD diagnosis in children respectively observed that "[arsenic] and [lead] levels in [amniotic fluids] tend to be positively associated with ASD risk, suggesting the possible role of prenatal exposure to toxic metals in the ASD development"³⁴ and "[r]esults from the present study show several associations between levels of metals and elements during gestation and ASD...in children. The most notable ones involved arsenic...mercury... and lead."³⁵

32. Such results have been replicated in prospective cohort studies of early life metal exposure, with a 2016 Korean study noting that "[e]ven low blood lead concentrations at 7–8 years of age are associated with more autistic behaviors at 11–12 years of age[.]"³⁶ Similarly, another prospective Korean study from 2017 "observed that higher blood mercury levels at late pregnancy, in cord blood, and at 2 and 3 years of age were positively associated with autistic behaviors among

³³ Arora, et al., *Fetal and postnatal metal dysregulation in autism*, 8 NATURE COMM. 1-10, 1, 5 (2017), available at: <https://www.nature.com/articles/ncomms15493>.

³⁴ Long, et al., *Autism spectrum disorders, endocrine disrupting compounds, and heavy metals in amniotic fluid: a case-control study* 10 MOL. AUTISM 1-19, 15 (2019), available at: <https://pubmed.ncbi.nlm.nih.gov/30647876/>.

³⁵ Skogheim, et al. *Metal and essential element concentrations during pregnancy and associations with autism spectrum disorder and attention-deficit/hyperactivity disorder in children*, 152 ENVIRON. INTL. 1-14, 1 (2021), available at: <https://pubmed.ncbi.nlm.nih.gov/33765546/>.

³⁶ Kyoung-Nam Kim et al., *Low-level lead exposure and autistic behaviors in school-age children* 53 EURO TOXICOLOGY 193-200, 193 (2016), available at: <https://pubmed.ncbi.nlm.nih.gov/26877220/>.

preschool-age children.”³⁷

33. Furthermore, smaller human studies from around the world have observed similar results, with a 2018 Chinese study concluding: “[t]he results of this study are consistent with numerous previous studies, supporting an important role for heavy metal exposure, particularly mercury, in the etiology of ASD.”³⁸ Indeed, a 2014 Egyptian study noted that “[l]ead and mercury are considered as one of the main causes of autism.”³⁹

34. On the basis of this robust body of data, several meta-analyses published in recent years report consistent associations between exposure to Toxic Heavy Metals and ASD in children; with the authors of a 2017 meta-analysis specifically concluding: “Results of the current meta-analysis revealed that mercury is an important causal factor in the etiology of ASD.”⁴⁰

³⁷ Jia Ryu et al., *Associations of prenatal and early childhood mercury exposure with autistic behaviors at 5 years of age: the Mothers and Children’s Environmental Health (MOCEH) Study*, 605-606 SCI. OF THE TOTAL ENV’T. 251-257, 251 (2017), available at: <https://pubmed.ncbi.nlm.nih.gov/28667852/>.

³⁸ Li, et al., *Blood Mercury, Arsenic, Cadmium, and Lead in Children with Autism Spectrum Disorder*, 181 BIOL. TRACE ELEM. RES. 31-37, 31 (2018), available at: <https://pubmed.ncbi.nlm.nih.gov/28480499/>; see also Dickerson, et al., *Autism spectrum disorder prevalence and associations with air concentrations of lead, mercury, and arsenic*, 188 ENVIRON. MONIT. ASSESS. 407 (2016); Mohamed, et al., *Assessment of Hair Aluminum, Lead, and Mercury in a Sample of Autistic Egyptian Children: Environmental Risk Factors of Heavy Metals in Autism*, BEHAV. NEUROL. (2015), available at: <https://pubmed.ncbi.nlm.nih.gov/26508811/>; Adams, et al., *Toxicological Status of Children with Autism vs. Neurotypical Children and the Association with Autism Severity*, 151 BIOL. TRACE ELEM. RES. 171-180 (2013), available at: <https://pubmed.ncbi.nlm.nih.gov/23192845/>.

³⁹ Yassa, H., *Autism: A form of lead and mercury toxicity*, 38 Environ. Tox. & Pharm. 1016-1024 (2014), available at: <https://pubmed.ncbi.nlm.nih.gov/25461563/> (emphasis added); see also Filon, et al., *Analysis of lead, arsenic and calcium content in the hair of children with autism spectrum disorder*, 20 BMC PUBLIC HEALTH 1-8 (2020), available at: <https://bmcpublihealth.biomedcentral.com/articles/10.1186/s12889-020-08496-w>; Fiore, et al., *Metal and essential element levels in hair and association with autism severity*, 57 JOURNAL OF TRACE ELEMENTS IN MEDICINE AND BIOLOGY 99-103 (2020), available at: <https://pubmed.ncbi.nlm.nih.gov/31630927/>.

⁴⁰ Jafari, et al., *The association between mercury levels and autism spectrum disorders: A systematic review and meta-analysis*, 44 J. Trace Elem. Med. Biol. 289-297, 289 (2017), available at: <https://pubmed.ncbi.nlm.nih.gov/28965590/>; Saghzadeh & Rezai, *Systematic review and meta-analysis links autism and toxic metals and highlights the impact of country development status: Higher blood and erythrocyte levels for mercury and lead, and higher hair antimony, cadmium, lead, and mercury*, 79 PROG. NEURO-PSYCHOPHARMACOL. BIOL. PSYCHIATRY 340-368 (2017), available at: <https://pubmed.ncbi.nlm.nih.gov/28716727/>; Wang, et al., *Exposure to Inorganic Arsenic and Lead and Autism Spectrum Disorder in Children: A Systematic Review and Meta-Analysis*, 21 CHEM. RES. TOXICOL. 32, 1904-1919 (2019), available at: <https://pubmed.ncbi.nlm.nih.gov/31549506/>; Sulaiman, et al., *Exposure to Aluminum, Cadmium, and Mercury and Autism Spectrum Disorder in Children: A Systematic Review and Meta-Analysis*, 33 Chem. Res. Toxicol. 11, 2699-2718 (2020), available at: <https://pubmed.ncbi.nlm.nih.gov/32990432/>; Yoshimasu, et al., *A meta-analysis of the evidence on the impact of prenatal and early infancy exposures to mercury on autism and*

35. The fact that such results have been observed in multiple studies, conducted by different researchers, at different times, in different parts of the world, in children of varying ages, and measuring a variety of end-points (including hair, blood, and urine), strongly supports a causal relationship between exposure to Toxic Heavy Metals and the development of ASD in children.

IV. Defendants Knowingly Sold Baby Foods Containing Dangerous Levels of Toxic Heavy Metals and Knew or Should Have Known of the Risks of Such Exposures in Children.

36. During the time that Defendants manufactured and sold Baby Foods in the United States, the weight of evidence showed that Defendants' Baby Foods exposed babies and children to unsafe levels of Toxic Heavy Metals capable of causing or exacerbating neurological injury and resulting ASD diagnoses, cognitive impairments, IQ loss, and other neurodevelopmental disorders and conditions. Defendants failed to disclose this risk to consumers through any means.

37. As discussed above, both independent testing, the Manufacturer Defendants' internal evaluations of their Baby Foods, and the Manufacturer Defendants' representations and disclosures to the Subcommittee and FDA reveal the presence of substantial amounts of Toxic Heavy Metals in Defendants' products at levels capable of causing the injuries complained of herein. As such, Defendants knew or should have known that their Baby Foods contain dangerous amounts of Toxic Heavy Metals.

38. Indeed, independent testing performed in early 2019 demonstrated elevated amounts of such Toxic Heavy Metals in Baby Food products on the U.S. market,⁴¹ and the HBBF Report further confirmed such contamination of Defendants' Baby Foods.⁴² And, as the Subcommittee found, the Manufacturer Defendants continued to sell their Baby Foods even after testing of both ingredients and finished products revealed the presence of substantial amounts of

attention deficit/hyperactivity disorder in the childhood, 44 NEURO TOXICOL. 121-131 (2014), available at: <https://pubmed.ncbi.nlm.nih.gov/24952233/>.

⁴¹ See Gardener, et al., *supra*.

⁴² See HBBF Rpt, *supra*.

1 Toxic Heavy Metals.⁴³

2 39. Moreover, the scientific literature on the dangers of Toxic Heavy Metals—
3 particularly as it relates to adverse effects on the neurodevelopment of children—have been well
4 known for decades. Defendants, as manufacturers, marketers, and retailers of Baby Foods, are held
5 to the standard of experts responsible for keeping abreast of the latest scientific developments
6 related to the dangers of contaminants in their products. Defendants failed to take action in
7 protecting vulnerable children from exposure to the Toxic Heavy Metals in their foods and, thus,
8 subjected them to the risk of neurological damage and developing neurodevelopmental disorders
9 such as ASD and cognitive impairments such as loss of IQ.

10 40. To be clear, the Manufacturer Defendants are able to manufacture Baby Foods that
11 do not pose such a dangerous risk to the health of infants and children by using alternative
12 ingredients, not adding certain pre-mix minerals and vitamins high in Toxic Heavy Metals, or
13 sampling their ingredients from other sources, as specifically acknowledged by Hain in its August
14 2019 presentation to the FDA: “Explore alternatives for Brown Rice ingredient to reduce risk.”⁴⁴
15 At the very least, Defendants were under a duty to warn unsuspecting parents of the presence of
16 and/or risks associated with the levels of Toxic Heavy Metals in their Baby Foods. However,
17 Defendants took no action, continued to manufacture, market, and sell their products with full
18 knowledge of the risks posed by their Baby Foods, and misled consumers regarding the safety of
19 their products, all to the harm of children.

20 **V. Exemplary/ Punitive Damages Allegations (Against Manufacturer** 21 **Defendants)**

22 41. Defendants’ conduct as alleged herein was intentional, willful, wanton, oppressive,
23 and done with reckless disregard for human life. Defendants’ conduct is particularly reprehensible
24 given that their toxic foods were directed at vulnerable babies—a population group far more
25 susceptible than adults to the neurotoxic dangers of heavy metals.

26 _____
27
28 ⁴³ See, e.g., Subcommittee Rpt. at 13-14.

⁴⁴ 2019 Hain & FDA Meeting at *10.

1 42. Defendants were fully aware of the safety risks of Baby Foods, particularly the
2 dangerous potential of their Baby Foods given the high content of Toxic Heavy Metals that have
3 all been associated with neurodevelopmental injury and disorders in children. Nonetheless,
4 Defendants deliberately crafted their label, marketing, and promotion to mislead consumers.
5 Indeed, Defendants repeatedly market their Baby Foods as safe for consumption and go so far as
6 claiming that they adhere to “the strictest standards in the world” and provide “baby’s food full of
7 nutrition while meeting standards strict enough for tiny tummies” as well as other statements and
8 representations that hold out their Baby Foods as safe for consumption by infants and young
9 children. In fact, as discussed above, Defendants routinely sold Baby Foods containing
10 astronomical amounts of Toxic Heavy Metals, regularly flouted their own internal limits of Toxic
11 Heavy Metals in Baby Foods, and failed to disclose to consumers that their products contained
12 such dangerous contaminants.

13 43. This was not done by accident or through some justifiable negligence. Rather,
14 Defendants knew they could profit by convincing consumers that their Baby Foods were harmless
15 to humans, and that full disclosure of the true risks of the Toxic Heavy Metals present in the Baby
16 Foods would limit the amount of money Defendants would make selling the products. Defendants’
17 object was accomplished not only through a misleading label, but through a comprehensive
18 scheme of selective misleading research and testing, failure to test, false advertising, and deceptive
19 omissions as more fully alleged throughout this pleading. Parents were denied the right to make
20 an informed decision about whether to purchase and Defendants’ Baby Food for their children,
21 knowing the full risks attendant to that use. Such conduct was done with conscious disregard of
22 Plaintiff’s rights.

23 44. Pursuant to La. C.C.P. art. 3546, the injurious conduct at issue in this case occurred
24 at each Defendants’ principal place of business, where decisions regarding the marketing, design,
25 manufacturing processes, and warnings on the products consumed by JMW were made.

26 45. Accordingly, Plaintiff requests punitive damages against the Defendants for the
27 harms caused to Plaintiff.
28

PLAINTIFF SPECIFIC ALLEGATIONS

46. Plaintiff was born on April 5, 2018, and diagnosed with ASD in early 2021, at approximately 2 years and 9 months of age.

47. Plaintiff started consuming Baby Food products manufactured by Defendants Nurture and Hain prior to his ASD diagnosis. Plaintiff consumed substantial quantities of the Baby Food products manufactured by Defendants prior to his ASD diagnosis.

48. Plaintiff's parents purchased these Baby Food products through Defendants Whole Foods and Amazon.

49. Defendants' Baby Foods consumed by Plaintiff were purchased in New Orleans, Louisiana and consumed in New Orleans, Louisiana.

50. Upon information and belief, the Baby Food products manufactured by Nurture and consumed by Plaintiff were all contaminated with substantial quantities of Toxic Heavy Metals, namely arsenic, mercury, and lead—exceeding that of any regulatory limits.

51. Upon information and belief, as a direct and proximate result of consuming Nurture's Baby Foods, Plaintiff was exposed to substantial quantities of Toxic Heavy Metals, namely mercury, lead, and arsenic.

52. Upon information and belief, nothing about Nurture's Baby Foods, or the nutrients or ingredients contained therein, was sufficient to blunt, ameliorate, inhibit, or prevent the ill effects caused by exposure to the Toxic Heavy Metals contained in Nurture's Baby Foods.

53. As a direct and proximate result of consuming Nurture's Baby Foods—and the exposure to the Toxic Heavy Metals therein—Plaintiff suffered neurological injury and was diagnosed with ASD.

54. Upon information and belief, the Baby Food products manufactured by Hain and consumed by Plaintiff were all contaminated with substantial quantities of Toxic Heavy Metals, namely arsenic, mercury, and lead—exceeding that of any regulatory limits.

55. Upon information and belief, as a direct and proximate result of consuming Hain's Baby Foods, Plaintiff was exposed to substantial quantities of Toxic Heavy Metals, namely mercury, lead, and arsenic.

56. Upon information and belief, nothing about Hain’s Baby Foods, or the nutrients or ingredients contained therein, was sufficient to blunt, ameliorate, inhibit, or prevent the ill effects caused by exposure to the Toxic Heavy Metals contained in Hain’s Baby Foods.

57. As a direct and proximate result of consuming Hain’s Baby Foods—and the exposure to the Toxic Heavy Metals therein—Plaintiff suffered neurological injury and was diagnosed with ASD.

58. Based on prevailing scientific evidence, exposure to Toxic Heavy Metals at the levels contained in Defendants’ Baby Foods can cause cognitive impairment, loss of IQ, and neurological injury resulting in ASD in humans.

59. Based on prevailing scientific evidence, nothing about the ingredients or total composition of Defendants’ Baby Foods is sufficient to mitigate, ameliorate, inhibit, or otherwise diminish the toxic effects of the Toxic Heavy Metals contained therein.

60. Had any Defendant warned Plaintiff’s parents that Defendants’ Baby Foods could lead to exposure to Toxic Heavy Metals or, in turn, neurological damage, cognitive impairment, loss of IQ, or ASD, Plaintiff would not have consumed the Baby Foods.

61. Plaintiff alleges that as a direct and proximate result of Plaintiff’s consumption of Baby Foods supplied and distributed by Defendants, Plaintiff suffered significant harm, conscious pain and suffering, physical injury and bodily impairment including, but not limited to, cognitive impairment, loss of IQ, neurological damage, ASD, and other *sequelae*.

CAUSES OF ACTION

COUNT I: PRODUCTS LIABILITY—FAILURE TO WARN

(Against Manufacturer Defendants)

62. Plaintiff incorporates by reference each allegation set forth in preceding paragraphs as if fully stated herein.

63. At all relevant times, Defendants engaged in the business of researching, testing, developing, designing, manufacturing, labeling, marketing, selling, inspecting, distributing, and

1 promoting Baby Foods, which are defective and unreasonably dangerous to consumers, including
2 Plaintiff and his parents, because they do not contain adequate warnings or instructions concerning
3 the dangerous characteristics of Baby Foods and Toxic Heavy Metals. These actions were under
4 the ultimate control and supervision of Defendants. At all relevant times, Defendants registered,
5 researched, manufactured, distributed, marketed, and sold Baby Foods and aimed at a consumer
6 market.

7 64. Defendants researched, tested, developed, designed, manufactured, labeled,
8 marketed, sold, inspected, distributed, and promoted, and otherwise released into the stream of
9 commerce their Baby Foods, and in the course of same, directly advertised or marketed the
10 products to consumers and end users, including Plaintiff and his parents, and therefore had a duty
11 to warn of the risks associated with the consumption of Baby Foods contaminated with Toxic
12 Heavy Metals.

13 65. At all relevant times, Defendants had a duty to properly test, develop, design,
14 manufacture, inspect, package, label, market, promote, sell, and distribute, maintain, supply,
15 provide proper warnings, and take such steps as necessary to ensure their Baby Foods did not cause
16 users and consumers to suffer from unreasonable and dangerous risks. Defendants had a continuing
17 duty to warn Plaintiff and his parents of dangers associated with Baby Foods. Defendants, as
18 manufacturers, sellers, or distributors of food, are held to the knowledge of an expert in the field.

19 66. At the time of the manufacture, Defendants could have provided the warnings or
20 instructions regarding the full and complete risks of Baby Foods because they knew or should have
21 known of the unreasonable risks of harm associated with the use of and/or exposure to such
22 products.

23 67. At all relevant times, Defendants failed and deliberately refused to investigate,
24 study, test, or promote the safety or to minimize the dangers of their products to users and
25 consumers and to those who would foreseeably use or be harmed by Defendants' Baby Foods.

26 68. Even though Defendants knew or should have known that Baby Foods posed a
27 grave risk of harm, they failed to exercise reasonable care to warn of the dangerous risks associated
28 with use of and exposure to the products. The dangerous propensities of their products and the
neurotoxic characteristic of Toxic Heavy Metals contained in Defendants' Baby Foods, as

described above, were known to Defendants, or scientifically knowable to Defendants through appropriate research and testing by known methods, at the time they distributed, supplied, or sold the product, and were not known to end users and consumers, such as Plaintiff. The product warnings for Baby Foods in effect during the time period Plaintiff consumed Baby Foods were vague, incomplete or otherwise inadequate, both substantively and graphically, to alert consumers to the severe health risks associated with Baby Foods consumption.

69. Defendants knew or should have known that their products created significant risks of serious bodily harm to consumers, as alleged herein, and Defendants failed to adequately warn or instruct consumers, i.e., the reasonably foreseeable users, of the risks of exposure to their products. Defendants failed to warn and have wrongfully concealed information concerning the dangerous level of Toxic Heavy Metals in their Baby Foods and the potential for consumed Baby Foods to expose children to Toxic Heavy Metals, and further, have made false and/or misleading statements concerning the safety of Baby Foods.

70. At all relevant times, Defendants' Baby Foods reached the intended consumers, handlers, and users or other persons coming into contact with these products, including Plaintiff, without substantial change in their condition as designed, manufactured, sold, distributed, labeled, and marketed by Defendants.

71. Plaintiff was exposed to Defendants' Baby Foods without knowledge of their dangerous characteristics.

72. At all relevant times, Plaintiff was exposed to Defendants' Baby Foods while using them for their intended or reasonably foreseeable purposes, without knowledge of their dangerous characteristics.

73. Plaintiff could not have reasonably discovered the defects and risks associated with Baby Foods prior to or at the time of Plaintiff consuming Baby Foods. Plaintiff relied upon the skill, superior knowledge, and judgment of the Defendants to know about and disclose serious health risks associated with using Defendants' products.

74. Defendants knew or should have known that the information disseminated with their Baby Foods was inadequate, failed to communicate adequate information on the dangers of consumption, and failed to communicate warnings and instructions that were appropriate and

adequate to render the products safe for their ordinary, intended, and reasonably foreseeable uses.

75. The information that Defendants did provide or communicate failed to contain relevant warnings, hazards, and precautions that would have enabled consumers such as Plaintiff and his parents to avoid purchasing and consuming the products. Instead, Defendants disseminated information that was inaccurate, false, and misleading, and which failed to communicate accurately or adequately the comparative severity, duration, and extent of the risk of injuries associated with use of and/or exposure to Baby Foods; continued to aggressively promote the safety of their products, even after they knew or should have known of the unreasonable risks from use or exposure; and concealed, downplayed, or otherwise suppressed, through aggressive marketing and promotion, any information or research about the risks and dangers of consuming Baby Foods.

76. This alleged failure to warn is not limited to the information contained on Baby Foods labeling. The Defendants were able, in accord with federal law, to comply with relevant state law by disclosing the known risks associated with Baby Foods through other non-labeling mediums, i.e., promotion, advertisements, public service announcements, and/or public information sources. But the Defendants did not disclose these known risks through any medium. The ability to provide such warnings is not prohibited by any federal law.

77. Furthermore, Defendants possess a First Amendment right to make truthful statements about the products they sell, and no law could lawfully constrain that constitutional right.

78. Had Defendants provided adequate warnings and instructions and properly disclosed and disseminated the risks associated with their Baby Foods, Plaintiff could have avoided the risk of developing injuries and could have obtained or used alternative products. However, as a result of Defendants' concealment of the dangers posed by their Baby Foods, Plaintiff could not have averted his injuries.

79. Defendants' conduct, as described above, was reckless. Defendants risked the lives of babies and children, including Plaintiff, with knowledge of the safety problems associated with Baby Foods, and suppressed this knowledge from the general public. Defendants made conscious decisions not to redesign, warn, or inform the unsuspecting public. Defendants' reckless conduct

warrants an award of punitive damages.

80. The Defendants' lack of adequate warnings and instructions accompanying their Baby Foods were a substantial factor in causing Plaintiff's injuries.

81. The Defendants' lack of adequate warnings and instructions accompanying their Baby Foods caused or contributed to Plaintiff's injuries.

82. As a direct and proximate result of the Defendants' failure to provide an adequate warning of the risks of Baby Foods, Plaintiff has been injured and sustained severe and permanent pain, suffering, disability, impairment, loss of enjoyment of life, economic loss, and damages including, but not limited to, past and future medical expenses, lost income, and other damages.

83. **WHEREFORE**, Plaintiff respectfully requests this Court to enter judgment in Plaintiff's favor for damages, together with interest, costs herein incurred, attorneys' fees, and all such other and further relief as this Court deems just and proper.

COUNT II: PRODUCTS LIABILITY—DESIGN DEFECT

(Against Manufacturer Defendants)

84. Plaintiff incorporates by reference each allegation set forth in preceding paragraphs as if fully stated herein.

85. At all times herein mentioned, Defendants designed, manufactured, tested, marketed, sold, handled, and distributed the Baby Foods consumed by Plaintiff. These actions were under the ultimate control and supervision of Defendants.

86. At all relevant times, Defendants' Baby Food products were manufactured, designed, and labeled in an unsafe, defective, and inherently dangerous manner that was dangerous for use by or expose to infants and babies, including Plaintiff.

87. Defendants' Baby Food products as researched, tested, developed, designed, licensed, manufactured, packaged, labeled, distributed, sold, and marketed by Defendants were defective in design and formulation in that, when they were placed into the stream of commerce, they were Defendants' Baby Food products, as researched, tested, developed, designed, licensed, manufactured, packaged, labeled, distributed, sold, and marketed by Defendants and were

1 defective in design and formulation in that, when they left the hands of Defendants, the foreseeable
2 risks exceeded the alleged benefits associated with their design and formulation.

3 88. At all relevant times, the Baby Food products consumed by Plaintiff were expected
4 to and did reach Plaintiff without a substantial change in their condition as manufactured, handled,
5 distributed, and sold by Defendants.

6 89. At all relevant times, Defendants knew or had reason to know that their Baby Food
7 products were defective and were inherently dangerous and unsafe when used in the manner
8 instructed and provided by Defendants.

9 90. Therefore, at all relevant times, Defendants' Baby Food products, as researched,
10 tested, developed, designed, registered, licensed, manufactured, packaged, labeled, distributed,
11 sold, and marketed by Defendants were defective in design and formulation, in one or more of the
12 following ways:

- 13 a. When placed in the stream of commerce, Defendants' Baby Foods were defective
14 in design and formulation, and, consequently, dangerous to an extent beyond that
15 which an ordinary consumer would contemplate;
- 16 b. When placed in the stream of commerce, Defendants' Baby Foods contained
17 unreasonably dangerous design defects and were not reasonably safe when used in
18 a reasonably anticipated or intended manner;
- 19 c. Defendants did not sufficiently test, investigate, or study their Baby Foods and,
20 specifically, the content of Toxic Heavy Metals in the ingredients used to
21 manufacture the foods and/or the finished products;
- 22 d. Defendants did not sufficiently test, investigate, or study their Baby Foods and,
23 specifically, the ability for Baby Foods to expose babies to high amounts of Toxic
24 Heavy Metals;
- 25 e. Exposure to Defendants' Baby Foods presents a risk of harmful effects that
26 outweigh any potential utility stemming from the use of the products;
- 27 f. Defendants knew or should have known at the time of marketing Baby Foods that
28 exposure to Toxic Heavy Metals contained in the Baby Foods could result in
neurological injuries, cognitive impairments, and neurodevelopmental disorders—

specifically ASD—and other severe illnesses and injuries; and

g. Defendants did not conduct adequate post-marketing surveillance of their Baby Foods.

91. Defendants could have employed safer alternative designs and formulations. For example, the Defendants could have avoided use of certain ingredients high in Toxic Heavy Metals, avoided using pre-mix vitamins high in Toxic Heavy Metals, and/or sampled their ingredients from other sources.

92. The likelihood that the design and formulation of the Baby Foods as sold by Defendants would cause JMW's neurological injury resulting in ASD and cognitive impairments and the severity of that injury outweigh any minimal burden on Defendants in using a safer alternative design as described herein.

93. Plaintiff consumed Defendants' Baby Food products in an intended or reasonably foreseeable manner without knowledge of their dangerous characteristics.

94. Defendants' Baby Food products were and are more dangerous than alternative products, and Defendants could have designed their Baby Food products to avoid harm to children. Indeed, at the time Defendants designed the Baby Food products, the state of the industry's scientific knowledge was such that a less risky design or formulation was attainable.

95. At the time the Baby Food products left Defendants' control, there was a practical, technically feasible, and safer alternative design that would have prevented the harm without substantially impairing the reasonably anticipated or intended function of Defendants' Baby Foods, as, for example, demonstrated by Hain's presentation to the FDA wherein Hain acknowledges the risk posed by specific ingredients in its Baby Foods.

96. Defendants have intentionally and recklessly defectively designed the Baby Foods with wanton and willful disregard for the rights and health of the Plaintiff, and with malice, placing their economic interests above the health and safety of the Plaintiff.

97. The design defects in Defendants' Baby Foods were substantial factors in causing Plaintiff's injuries.

98. The design defects in Defendants' Baby Foods caused or contributed to Plaintiff's injuries.

1 99. As a direct and proximate result of the Defendants' defective design of the Baby
2 Foods, Plaintiff has been injured and sustained severe and permanent pain, suffering, disability,
3 impairment, loss of enjoyment of life, economic loss, and damages including, but not limited to,
4 medical expenses, lost income, and other damages.

5 100. **WHEREFORE**, Plaintiff respectfully requests this Court to enter judgment in
6 Plaintiff's favor for damages, together with interest, costs herein incurred, attorneys' fees, and all
7 such other and further relief as this Court deems just and proper.

8
9 **COUNT III: PRODUCTS LIABILITY—MANUFACTURING DEFECT**

10 **(Against Manufacturer Defendants)**

11 101. Plaintiff incorporates by reference each allegation set forth in preceding paragraphs
12 as if fully stated herein.

13 102. At all times herein mentioned, Defendants designed, manufactured, tested,
14 marketed, sold, handled, and distributed the Baby Foods consumed by Plaintiff.

15 103. At all relevant times, the Baby Foods consumed by Plaintiff were expected to and
16 did reach Plaintiff without a substantial change in their condition as manufactured, handled,
17 distributed, and sold by Defendants.

18 104. At all relevant times, the Baby Foods consumed by Plaintiff were used in a manner
19 that was foreseeable and intended by Defendants.

20 105. The Baby Foods consumed by Plaintiff were not reasonably safe for their intended
21 use and were defective with respect to their manufacture, as described herein, in that Defendants
22 deviated materially from their manufacturing specifications and/or performance standards and/or
23 such design and manufacture posed an unreasonable risk of harm to Plaintiff.

24 106. The Defendants' Baby Foods are inherently dangerous and defective, unfit and
25 unsafe for their intended and reasonably foreseeable uses, and do not meet or perform to the
26 expectations of parents or children.

27 107. The Defendants' Baby Foods create risks to the health and safety of babies that are
28 far more significant and devastating than the risks posed by other baby food products, and which

1 far outweigh the utility of the Baby Foods products because of Defendants’ manufacturing defects,
2 which included but were not limited to: Failure to adequately inspect/test the Baby Foods during
3 the manufacturing process; Failure to implement procedures that would reduce or eliminate the
4 levels of Toxic Heavy Metals in Baby Foods; Failure to use ingredients free from, or which contain
5 far less, Toxic Heavy Metals to manufacture Baby Foods.

6 108. Defendants have intentionally and recklessly manufactured the Baby Foods with
7 wanton and willful disregard for the rights and health of the Plaintiff, and with malice, placing
8 their economic interests above the health and safety of the Plaintiff.

9 109. The manufacturing defects in Defendants’ Baby Foods were substantial factors in
10 causing Plaintiff’s injuries.

11 110. The manufacturing defects in Defendants’ Baby Foods caused or contributed to
12 Plaintiff’s injuries.

13 111. As a direct and proximate result of the Defendants’ defective manufacture of the
14 Baby Foods, Plaintiff has been injured and sustained severe and permanent pain, suffering,
15 disability, impairment, loss of enjoyment of life, economic loss, and damages including, but not
16 limited to, medical expenses, lost income, and other damages.

17 112. **WHEREFORE**, Plaintiff respectfully requests this Court to enter judgment in
18 Plaintiff’s favor for damages, together with interest, costs herein incurred, attorneys’ fees, and all
19 such other and further relief as this Court deems just and proper.

20 **COUNT IV: PRODUCTS LIABILITY—BREACH OF EXPRESS WARRANTY**
21 **(Against Manufacturing Defendants)**
22

23 113. Plaintiff incorporates by reference each allegation set forth in preceding paragraphs
24 as if fully stated herein.

25 114. Defendant Baby Food Manufacturers’ Baby Food products are unreasonably
26 dangerous because they do not, and did not, conform to the express warranty made at all relevant
27 times by the Defendant Baby Food Manufacturers that their product was “baby food.”

28 115. The express warranty that the Defendant Baby Food Manufacturers’ product was

1 “baby food” induced the parents of JMW to purchase and use the Baby Food as “baby food.”

2 116. At all times the Baby Foods were used in a reasonably anticipated or intended
3 manner.

4 117. Plaintiff’s injuries were directly and proximately caused or contributed to because
5 the express warranty that the Baby Food was in fact appropriate to feed to babies was untrue.

6 118. In fact, the “food” Defendants sold was more appropriately warranted as rat food
7 and was not healthy or something that a baby should ever ingest as food.

8 119. **WHEREFORE**, Plaintiff respectfully requests that this Court enter judgment in
9 Plaintiff’s favor for damages, together with interest, costs herein incurred, attorneys’ fees, and all
10 such other and further relief as this Court deems just and proper.

11 **COUNT V: REDHIBITION**
12 **(Against Retailer Defendants)**
13

14 120. Plaintiff incorporates by reference each allegation set forth in preceding paragraphs
15 as if fully stated herein.

16 121. Whole Foods and Amazon represent and advertise that they take great care to
17 ensure that the products they sell are safe for consumption. Whole Foods and Amazon represent
18 and advertise that, in order to do so, they receive data on the products they sell, including
19 manufacturer testing.

20 122. Upon information and belief, Whole Foods and Amazon, the owner of Whole
21 Foods, knew or should have known about the heavy metal levels in the Baby Foods sold to
22 Plaintiff’s parents and consumed by Plaintiff.

23 123. Despite this actual or constructive knowledge, Whole Foods and Amazon sold
24 Baby Foods to Plaintiff, which were contaminated with sufficient quantities of heavy metals to
25 cause neurological injury resulting in ASD, IQ loss, and other neurodevelopmental disorders. As
26 such, the Retailer Defendants are bad faith sellers under redhibition law.

27 124. The Retailer Defendants, as bad faith sellers of Baby Foods, knew that the Baby
28 Foods had a defect, namely that they were tainted by levels of heavy metals sufficient to cause

1 neurological injury capable of resulting in ASD or IQ loss, but omitted to declare it.

2 125. Despite their knowledge of the levels of heavy metal contamination, the Retailer
3 Defendants also declared that the Baby Foods they sold had a quality that they knew the products
4 did not have, namely that they were healthy baby food and appropriate to feed to babies and young
5 children.

6 126. The Retailer Defendants had direct knowledge of the amount of tainted food
7 Plaintiff consumed because they had records of how much of the Manufacturer Defendants' Baby
8 Food products his parents purchased. Despite this knowledge, the Retailer Defendants continued
9 to induce Plaintiff's parents to purchase Nurture and Hain's food by specifically promoting and
10 suggesting Nurture's and Hain's baby food products to Plaintiff's parents for purchase.

11 127. The Retailer Defendants even offered subscription discounts to encourage
12 Plaintiff's parents to purchase additional and larger quantities of the tainted foods the Retailer
13 Defendants knew Plaintiff was consuming.

14 128. As a direct and proximate result of the Defendants' failure to declare the presence
15 or levels of Toxic Heavy Metals in the Baby Foods, Plaintiff was injured and sustained severe and
16 permanent injuries, pain, suffering, disability, impairment, loss of enjoyment of life, economic
17 loss, and damages including, but not limited to, medical expenses, lost income, attorneys' fees,
18 and other damages to be more fully shown at trial of this matter.

19 129. WHEREFORE, Plaintiff respectfully requests this Court to enter judgment in
20 Plaintiff's favor for damages, together with interest, costs herein incurred, attorneys' fees, and all
21 such other and further relief as this Court deems just and proper.

22 **COUNT VI: NEGLIGENCE**

23 **(Against Retailer Defendants)**

24
25 130. Plaintiff incorporates by reference each allegation set forth in preceding paragraphs
26 as if fully stated herein.

27 131. At all relevant times, the Retailer Defendants operated stores and/or online
28 marketplaces as sellers of third-party products. The Retailer Defendants had physical custody of

the products at issue either in their distribution warehouses or in their physical stores. The Retailer Defendants also controlled the process of the transactions and delivery of the products at issue through their product fulfillment programs. In a recent unanimous decision, the U.S. Consumer Product Safety Commission determined that Amazon operates as a distributor, and as such was responsible under federal law for notifying consumers of certain hazardous products and remediating those hazards, given the control that Amazon exercises over products sold through “Fulfilled by Amazon.”⁴⁵

132. At all relevant times, the Retailer Defendants were service providers engaged in the business of curating, selecting, testing, and monitoring of goods.

133. At all relevant times, the Retailer Defendants held themselves out to the public as selecting, curating, and actively monitoring their products for safety through independent testing and evaluation of the products they sell.

A. Whole Foods⁴⁶

134. Whole Foods maintains a quality standards team that develops and maintains the standards for ingredients, products, and the sourcing of products prior to products being placed on Whole Foods’ shelves.

135. Whole Foods also maintains a list of acceptable and unacceptable ingredients.⁴⁷

136. Whole Foods employs a “Category Merchant” who is responsible for Baby Food

⁴⁵ Decision & Order, *In the Matter of Amazon.com, Inc.*, CPSC Dkt. No. 21-2, at 11, 27 (July 29, 2024), available at <https://www.cpsc.gov/s3fs-public/pdfs/recall/lawsuits/abc/142%20-%20In%20the%20Matter%20of%20Amazon.com%20Inc.%20Decision%20and%20Order.pdf>.

⁴⁶ Allegations regarding Whole Foods’ negligence are included in this Third Amended Petition for preservation purposes. Plaintiffs understand the Court’s order to allow amendment with respect to allegations regarding Amazon’s Negligent Undertaking. Plaintiffs Second Amended Complaint, while alleging Negligent Undertaking against both Amazon and Whole Foods, alleged Negligence separate from Negligent Undertaking against those retailers as well. It is unclear to Plaintiffs whether the Court has dismissed the “pure” Negligence claims against Whole Foods or only the Negligent Undertaking claim. Nevertheless, in an abundance of caution and in keeping with the Court’s Order with respect to this amendment, Plaintiffs have not substantively altered any allegations with respect to Whole Foods.

⁴⁷ Ex. A 11/4/2022 P. Brady Deposition exhibit 5, Whole Foods Food Ingredient Quality Standards

1 products. The Category Merchant’s duties include communicating the acceptable and unacceptable
2 ingredient list to baby food suppliers.

3 137. Whole Foods tells its product suppliers like Nurture and Hain to establish a process
4 to identify environmental, health, safety, and ethical risks associated with their operational
5 practices.

6 138. In order to sell products at Whole Foods, companies like Nurture and Hain must
7 comply with Whole Foods’ list of acceptable/unacceptable ingredients.

8 139. Whole Foods and Amazon both manufacture their own private label baby food
9 products. As such, Whole Foods and Amazon are experts in the field. As experts in the field,
10 Whole Foods and Amazon were aware or should have been aware of the issues regarding toxic
11 heavy metals in Baby Food.

12 140. As manufacturers of their own baby food products and experts in the field, Whole
13 Foods and Amazon were aware or should have been aware of the Congressional Report regarding
14 toxic heavy metals in Nurture’s and Hain’s baby food.

15 141. Indeed, under 21 C.F.R. § 109.7(b), manufacturers of food must at all times utilize
16 quality control procedures which will reduce contamination to the lowest level currently feasible.
17 This requirement applies regardless of any tolerance or action levels that may be set by the FDA
18 or other regulatory bodies. Thus, given Amazon and Whole Foods expertise, safety monitoring,
19 and ingredient control procedures and requirements, Amazon and Whole Foods knew or should
20 have known that the heavy metals in Nurture’s and Hain’s Baby Food products were not reduced
21 to the lowest levels feasible at the time as required under 21 C.F.R. § 109.7(b).

22 142. Instead, Whole Foods and Amazon mislead consumers into believing that the
23 Manufacturer Defendants’ Baby Food products sold by Whole Foods and Amazon are safe and
24 actively monitored for safety concerns.

25 143. Despite Whole Foods’ and Amazon’s representations to consumers, Whole Foods
26 and Amazon never chose to add toxic heavy metals to their acceptable/unacceptable ingredients
27 list, place warnings on those product’s pages on their websites, or remove those products from
28 their shelves.

144. Additionally, Whole Foods represents to consumers that it has “unparalleled quality

standards” to ensure that the food they sell “meet[s] a higher standard.”⁴⁸ Yet, Whole Foods failed to address heavy metals in baby food in any way. Meanwhile, as early as 2012, Walmart, one of Whole Foods’ competitors, set an internal limit for arsenic in finished baby food products at 23 parts per billion. Still, Whole Foods failed to take any action to limit heavy metals in baby food products sold in their stores.

B. Amazon’s Product Safety Team Investigates and Commits to Warning about Safety Concerns.

145. Amazon maintains a product safety team that monitors customer reviews for potential safety issues.

146. Amazon tells consumers that its product safety team monitors the products sold on its site and that it may post warnings on the product page “in concerning situations.” For example, Amazon tells consumers that in concerning situations, it can “remove the product from the website,” “contact sellers and manufacturers for more information,” and/or “put warnings on the product detail page.”⁴⁹

147. Amazon’s product safety team monitored or should have monitored the customer reviews for Nurture’s and Hain’s baby food products. Monitoring these reviews revealed or would have revealed questions and concerns about heavy metals in Nurture’s baby foods—and, upon information and belief, in Hain’s baby foods—as early as 2017, years before Plaintiff was born.⁵⁰

148. One of these reviews concerned Nurture’s Superfood Puffs Variety Pack. This variety pack contained multiple products, including Nurture’s “Superfood Puffs Organic Grain Snack – Sweet Potato and Carrot.”

149. In responding to the customer question, Nurture wrote on August 21, 2018 that it had “strict, self-imposed quality standards and proactive testing at[sic] that is done by accredited

⁴⁸ Ex. B 11/4/2022 P. Brady Deposition exhibit 2, 8/22/2019 Whole Foods’ Code of Business Conduct

⁴⁹ <https://www.amazon.com/gp/help/customer/display.html?nodeId=GLD7VXFKV4AWU78X>

⁵⁰ Ex. C Amazon Customer Q&A regarding Happy Baby Superfood Puffs; Ex. D, Amazon Customer Reviews regarding Happy Baby Organics Superfood Puffs

expert laboratories.” Nurture also claimed that it had “a proactive contaminant monitoring program to ensure that all of our products are safe for consumption.”

150. Then, as explained further below, in October 2019, Happy Baby Bright Futures revealed that this product, the Superfood Puffs Organic Grain Snack – Sweet Potato and Carrot, and sold by Amazon, contained as much as 295 ppb arsenic –a level almost three times the limit proposed by the FDA in 2016.

151. Thus, by October 2019, Amazon’s product safety team knew or should have known that Nurture’s representations regarding its “quality standards” and “proactive testing” were false or misleading.

152. Despite this report directly identifying Amazon as a seller of a product with nearly three times the FDA’s proposed limit at the time, Amazon failed to remove or correct Nurture’s representations regarding Nurture’s foods. Amazon also failed to provide a separate warning to parents regarding this product.

153. Then in November of 2020, JMW’s parents purchased that product and JMW consumed it, unbeknownst of its arsenic content due to Nurture and Amazon’s failures to warn of the defect.

C. Reputable Watchdog Organizations Implicate Amazon in the Sale of Contaminated Baby Food.

154. But Amazon does not limit its monitoring only to customer reviews. Amazon also tells customers that its Product Safety Team affirmatively “investigates and acts on reported safety complaints” to “protect customers from risks of injury related to products sold on Amazon.com.”⁵¹ Amazon also tells consumers that it “proactively investigates and addresses reported safety complaints[.]”⁵²

⁵¹ <https://www.amazon.com/gp/help/customer/display.html?nodeId=GLD7VXFKV4AWU78X>

⁵² https://www.amazon.com/gp/help/customer/display.html?nodeId=GLD7VXFKV4AWU78X&ref_=bsx_ro_dt_pa_link

1 155. In its public commitments to consumers like JMW and his parents, Amazon does
2 not limit the sources of information it consults to identify, investigate, or evaluate safety
3 complaints or concerns.

4 156. Consider that Amazon is one of the largest corporations in the world. Corporations
5 like Amazon regularly monitor news and other publications for coverage that could be adverse to
6 the corporation's business or reputation.

7 157. Thus, consumers like JMW and his parents reasonably believe Amazon does more
8 than merely pass on reports it receives from government entities. Rather, consumers like JMW and
9 his parents rely upon Amazon's representations that Amazon will *proactively investigate* safety
10 complaints available from reputable sources.

11 158. Numerous safety complaints were made regarding Nurture's and Hain's baby food
12 products as early as 2017, a year before JMW was born.

13 159. For example, in December 2017 Healthy Baby Bright Futures ("HBBF") published
14 a report entitled "Arsenic in 9 Brands of Infant Cereal." The report described rice cereal as
15 "Infants' top source of arsenic" and described multiple studies showing arsenic's link to "IQ loss
16 and other neurodevelopmental impacts for children exposed . . . during the first few years of life."⁵³

17 160. The report included testing that revealed that Hain's and Nurture's products
18 contained as much as 92 ppb and 123 ppb arsenic, respectively.

19 161. The report also noted that the FDA's 2016 draft guidelines included an action level
20 of 100 ppb for arsenic in infant rice cereal, putting Nurture's products over the limit and Hain's
21 products dangerously close to it.

22 162. This 2017 HBBF report also identified Amazon as the seller of multiple products
23 made by other manufacturers that tested well above 100 ppb arsenic, including a product with 235
24 ppb arsenic.

25 163. In another example, in 2018 Consumer Reports published the article "Heavy Metals
26 in Baby Food: What you Need to Know."⁵⁴ This report showed that "about two-thirds" of tested
27

28 ⁵³ https://hbbf.org/sites/default/files/2022-12/HBBF_ArsenicInInfantCerealReport_0.pdf

⁵⁴ <https://www.consumerreports.org/health/food-safety/heavy-metals-in-baby-food-a6772370847/>

Baby Food products had “worrisome levels of at least one heavy metals” and that “fifteen of the foods would pose potential health risks to a child regularly eating just one serving or less per day.” The report went on to say that “snacks and products containing rice and/or sweet potatoes were particularly likely to have high levels of heavy metals.”

164. In the 2018 Consumer Reports findings, Hain’s and Nurture’s products were both described as containing levels of heavy metals that would pose potential health risks from less than one manufacturer’s recommended serving.

165. Then in 2019, one year after JMW was born and while he continued to consume foods sold by Amazon, HBBF published their “What’s in my baby’s food” report.⁵⁵ The report tested 168 different baby food products. But the report was not limited to only the direct manufacturers of each product. Instead, the report specifically identified the retailers selling each product contaminated with heavy metals.

166. Amazon featured prominently in the HBBF 2019 report. For example, the report includes a map of the retailers where the contaminated products were purchased and lists Amazon as an “online retailer.”



⁵⁵ https://hbbf.org/sites/default/files/2022-12/BabyFoodReport_ENGLISH_R6_0.pdf

167. In another example, HBBF identifies Amazon.com as the seller of a Nurture/Happy Baby product containing 295 parts per billion Arsenic.

HappyBABY	Superfood Puffs Organic Grain Snack - Sweet Potato & Carrot	Snack - rice puffs	295	91	3.7	12.2	1.94	Washington, DC	amazon.com
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168. This product, the “Superfood Puffs Organic Grain Snack – Sweet Potato and Carrot,” is a product that JMW’s parents purchased as late as December 2020 from Amazon.com and that JMW consumed.

169. Amazon’s product safety team knew or should have known of the HBBF report given the fact that HBBF specifically identified Amazon as a retailer selling contaminated baby foods.

D. Amazon Could No Longer Rely on Assumptions or Representations from the Manufacturing Defendants.

170. Because Amazon should have known about the 2019 HBBF report, Amazon should not have continued to rely on any representations Nurture and Hain made regarding the safety of their foods that were sold on Amazon.com.

171. While Nurture responded to customer reviews on Amazon.com saying that its foods were safe, Amazon now had information that directly contradicted Nurture’s representations.

172. The same is true for Hain with respect to any representations Hain made to Amazon directly or any assumptions Amazon made about Hain’s products.

173. Whatever representations either Hain or Nurture may have made to Amazon in order to sell their products on Amazon.com, those representations should have been evaluated in the light of a credible report showing that Nurture and Hain’s foods contained levels of arsenic above 100 ppb, and in some cases as high as 455 ppb.

174. Beyond customer reviews, in light of the credible public reports from organizations like HBBF, Consumer Reports, and Nutrition Facts, Amazon could no longer reasonably rely on the assumption that sealed containers of Nurture’s and Hain’s products were not contaminated.

175. In light of these facts, Amazon’s Product Safety Team, then, investigated or should have conducted an “investigation” as Amazon tells customers it will.

1 176. In addition to monitoring and investigating product issues, Amazon provides
 2 customers like JMW and his parents with an “A-to-z Guarantee” that Amazon states “ensures that
 3 customers are covered an eligible for a full refund for any item they purchase . . . including helping
 4 to resolve, in the unlikely event, valid personal injury or property damage claims.”⁵⁶

5 177. Accordingly, Amazon’s product safety team knew or should have known of these
 6 concerns and removed the products from its website, contacted Nurture and Hain for additional
 7 information, and/or put warnings on the product detail page for Nurture’s and Hain’s baby food
 8 products.

9
 10 **E. Amazon Had Actual and Imputed Knowledge of the Risks of the**
 11 **Manufacturing Defendants Products.**

12 178. In addition to what Amazon knew or should have known as a seller of baby food
 13 products. Amazon had actual knowledge of the industry-wide problem of heavy metals in baby
 14 food products.

15 179. Amazon manufactured their own private label baby food products.

16 180. Amazon began manufacturing their own private label baby food products many
 17 years before Plaintiff was born.

18 181. Indeed, Amazon knew well before 2021 that there was an issue of heavy metals in
 19 baby food products. In response to question about whether Amazon’s “Mama Bear” baby food
 20 products had been tested for heavy metals, Amazon told consumers that their baby foods have
 21 been and are tested for heavy metals.⁵⁷

22 182. As a manufacturer of baby food products Amazon was an expert in the field of baby
 23 food manufacturing.

24 183. Thus, Amazon cannot reasonably state that it was knowledgeable of the issue of
 25 heavy metals in its own products, but simultaneously lacked any awareness of the issue with
 26

27
 28 ⁵⁶ <https://trustworthyshopping.aboutamazon.com/focus/product-safety>

⁵⁷ https://www.amazon.com/ask/questions/Tx298ACHVYB48HI/ref=ask_ql_ql_al_hza

1 respect to other suppliers' products that Amazon sold.

2 184. That said, beyond drawing an inference that Amazon knew of the reports regarding
3 heavy metals in baby food industry-wide due to public reports, Louisiana law presumes such
4 knowledge for Defendants like Amazon.

5 185. Under Louisiana law, "a manufacturer is held to the knowledge and skill of an
6 expert. It ***must keep abreast*** of scientific knowledge, discoveries, and advances ***and is presumed***
7 ***to know what is imparted thereby.***" *Gregor v. Argenot Great Cent. Ins. Co.*, 851 So. 2d 959, 968-
8 969 (La. 2003) (emphasis added) citing *Simeon v. Doe*, 618 So. 2d 848, 852 (La. 1993).

9 186. Thus, Amazon, as an expert in baby food manufacturing, knew of the following
10 non-exhaustive list of scientific knowledge, discoveries, and advances:

- 11 a. 2017 HBBF Report, "Arsenic in 9 Brands of Infant Cereal;"
- 12 b. 2017, NutritionFacts.org, "Arsenic in Infant Rice Cereal;"⁵⁸
- 13 c. 2017, Environmental Defense Fund, "Lead in Food: A Hidden Health Threat;"⁵⁹
- 14 d. 2018, FDA, "What FDA is Doing to Protect Consumers from Toxic Metals in
15 Foods"⁶⁰
- 16 e. 2018 Consumer Reports, "Heavy Metals in Baby Food: What You Need to Know;"
- 17 f. 2019 HBBF Report, "What's in My Baby's Food;"
- 18 g. 2020 Clean Label Project, "Baby Food: A Puree of Plasticizers and Heavy
19 Metals"⁶¹; and
- 20 h. All scientific research linking heavy metal exposure to neurodevelopmental
21 disorders and detrimental effects.

22 187. As experts in baby food manufacturing, Amazon knew or was presumed to have
23 known of the defects featured in the Baby Food products at issue and their dangerous heavy metal
24 content.

25
26 ⁵⁸ <https://nutritionfacts.org/video/arsenic-in-infant-rice-cereal/>

27 ⁵⁹ https://www.edf.org/sites/default/files/edf_lead_food_report_final.pdf

28 ⁶⁰ <https://www.fda.gov/food/conversations-experts-food-topics/what-fda-doing-protect-consumers-toxic-metals-foods>

⁶¹ <https://cleanlabelproject.org/baby-food-white-paper/>

1 188. Manufacturers of baby food products, like Amazon, were well aware of the
2 industry-wide problem regarding heavy metals in baby food long before the Congressional report
3 brought the issue to the public.

4 189. Amazon knew of the hidden defect which could injure a child and which could have
5 easily been electronically communicated to Plaintiff's parents by placing a warning on the product
6 pages.

7
8 **F.** [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED] [REDACTED]
13 [REDACTED]
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[REDACTED]

[REDACTED]

[REDACTED]

G. Amazon Failed to Warn Plaintiff of the Defect in the Manufacturing Defendants' Food and Caused Plaintiff Harm.

207. Plaintiff is a child completely reliant on the sellers of baby food to act as ordinary

⁶⁸ Ex. 65 at Hain-MDL-001-049576.

⁶⁹ *Id.*

⁷⁰ *Id.* at Hain-MDL-001-049575

1 ethical sellers would in the face of reports that the products they sold, and are selling, for
2 consumption by infants were and are contaminated with heavy metals.

3 208. Given Amazon's actual and imputed knowledge of the defects contained in
4 Nurture's and Hain's foods and Amazon's representations about providing warnings in concerning
5 situations, Amazon had a duty to disclose or warn JMW and his parents about these defects.
6 Additionally, Amazon had a duty to disclose the presence of heavy metals in the Baby Food
7 products they sold to Plaintiff's parents for the benefit of Plaintiff because they met all of the *Bunge*
8 factors. *See e.g. First Am. Bankcard, Inc. v. Smart Bus. Tech., Inc.*, 178 F. Supp. 3d 390, 401-402
9 (E.D. La, April 12, 2016) (Engelhardt, K. presiding) citing *Bunge Corp. v. GATX Corp.*, 557 So.
10 2d 1376, 1384 (La. 1990).

11 209. Yet despite knowledge of the defective condition of the Nurture's and Hain's Baby
12 Food, Amazon continued to sell them and failed to declare the defect or warn Plaintiff about the
13 defect.

14 210. At all times, the Baby Foods were used in a reasonably anticipated or intended
15 manner.

16 211. As a direct and proximate result of Amazon's conduct, Plaintiff was injured and
17 sustained severe and permanent injuries, pain, suffering, disability, impairment, loss of enjoyment
18 of life, economic loss, and damages including, but not limited to, medical expenses, lost income,
19 attorneys' fees, and other damages to be more fully shown at trial of this matter.

20 212. At all relevant times, the Retailer Defendants induced the public, including
21 Plaintiff, to use their service by promoting themselves as service providers that selected, curated,
22 and actively monitored products for sale at their physical locations and/or online platforms for
23 safety through independent testing and evaluation of those products.

24 213. The primary incentive to purchase Baby Foods from the Retailer Defendants was
25 the services they provide—namely, the selection, curation, and active monitoring for the
26 wholesomeness and safety of the products they sell, such that the ability to purchase a product
27 from the Retailer Defendants amounts to an independent endorsement of its safety.

28 214. As service providers engaged in the curation, selection, testing and monitoring of
goods, including Baby Foods, the Retailer Defendants owed a duty to Plaintiff to conduct those

activities in a way that would not pose an unreasonable risk of injury to Plaintiff.

215. The Retailer Defendants breached their duty to comport themselves as an ordinarily prudent service provider when they failed to properly inspect, monitor, test, investigate, and take other such steps as necessary to ensure their curation, selection, and sale of Baby Foods did not unreasonably pose a danger to their patrons who used their services to purchase Baby Foods.

216. In a recent case involving Amazon, the Louisiana Supreme Court affirmed that in some circumstances retailers may also be liable for a negligent undertaking when injuries result from products they sell. *See Pickard v. Amazon.com, Inc.*, 2023-01596 (La. 6/28/24), 2024 WL 3218633, at **6–9. Those circumstances are present here.

217. First, the Retailer Defendants assumed a duty by undertaking the rendition of services to another, in this case by selling the Manufacturer Defendants’ Baby Food products, which the Retailer Defendants should have recognized as necessary for the protection of a third person, in this case Plaintiff. The scope of the Retailer Defendants’ involvement and the extent of their authority in this relationship—including their purported efforts to ensure product safety by, e.g., monitoring customer reviews, mandating quality standards, investigating products of concern, removing unsafe products, and notifying consumers of safety concerns—confirm that this was an affirmative undertaking.

218. Second, the Retailer Defendants’ failure to exercise reasonable care in performing their assumed duty makes them liable for Plaintiff’s injuries. This failure increased the risk of harm to Plaintiff. By offering the Manufacturer Defendants’ Baby Food products for sale and purporting, yet failing, to independently assure their safety, the Retailer Defendants exacerbated the risk that unsafe products would be eaten by consumers like Plaintiff. And Plaintiff suffered harm because he and his parents relied upon the Retailer Defendants’ representations regarding the safety of the products they sold and the active monitoring and curating the Retailer Defendants represented that they conducted on the products they sold.

219. Amazon also failed to exercise reasonable care in performing its assumed duty by failing to disclose or warn about the existence of heavy metals in Nurture’s and Hain’s foods. Amazon told consumers that it “proactively investigates and addresses reported safety complaints.” Yet Amazon failed to appropriately investigate or address safety concerns Amazon

1 raised to both Nurture and Hain. [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]

7 220. JMW then consumed products containing the defect that Amazon was aware of but
8 failed to disclose. JMW was subsequently diagnosed with ASD following the consumption of these
9 products.

10 221. The negligence of the Retailer Defendants was a substantial factor in causing
11 Plaintiff's injuries.

12 222. The negligence of the Retailer Defendants caused or contributed to Plaintiff's
13 injuries.

14 223. As a direct and proximate result of the Retailer Defendants' negligence, Plaintiff
15 has been injured and sustained severe and permanent pain, suffering, disability, impairment, loss
16 of enjoyment of life, economic loss, and damages including, but not limited to, past and future
17 medical expenses, lost income, and other damages.

18 224. WHEREFORE, Plaintiff respectfully requests this Court to enter judgment in
19 Plaintiff's favor for damages, together with interest, costs herein incurred, attorneys' fees, and all
20 such other and further relief as this Court deems just and proper.

21 **COUNT VII: LOUISIANA PRODUCTS LIABILITY ACT**

22 **(Against Retailer Defendants)**
23

24 225. Plaintiff incorporates by reference each allegation set forth in preceding paragraphs
25 as if fully stated herein.

26 226. Plaintiff further incorporates by reference each allegation set forth regarding the
27 Manufacturer Defendants as if fully stated herein.

28 227. Under the Louisiana Products Liability Act, Amazon and Whole Foods are sellers

1 who are in the business of conveying title to or possession of the Baby Foods to consumers in
2 exchange for money.

3 228. As sellers, Amazon and Whole Foods are also “Manufacturers” under the Louisiana
4 Products Liability Act because they exercised control over or influenced characteristics of the
5 design, construction, or quality of the Baby Food products.

6 229. Whole Foods exercised control over and influenced every ingredient of every
7 product it allowed in its stores or sold on-line, including the Baby Food products at issue.

8 230. Amazon, as the parent of Whole Foods (a wholly owned subsidiary), likewise
9 exercised control and influence over every ingredient of every product allowed in Whole Foods’
10 stores or sold online via Whole Foods.

11 231. Indeed, following Amazon’s purchase of Whole Foods, the number of ingredients
12 on Whole Foods’ unacceptable ingredients list increased.

13 232. Amazon and Whole Foods operated both online and physical marketplaces of third-
14 party products where they (i) had physical custody of the Baby Food products in their distribution
15 warehouses and stores; and (ii) controlled the process of the transaction and delivery of those
16 products to Plaintiff through their product fulfillment programs.

17 233. The Baby Food products that Amazon and Whole Foods sold were unreasonably
18 dangerous because of (i) their construction or composition, (ii) their design, (iii) their lack of
19 adequate warnings, and (iv) their nonconformity to the Nuture’s and Hain’s express warranties.

20 234. These defects existed in the Baby Food products at the time the products left the
21 Nuture’s and Hain’s possession. And, as explained above, Amazon and Whole Foods knew or
22 should have known the Baby Food products were defective when Amazon and Whole Foods
23 gained possession of the products.

24 235. Moreover, Amazon and Whole Foods manufactured their own private label baby
25 food products and thus were experts in the field of baby food manufacturing.

26 236. Amazon and Whole Foods began manufacturing their own private label baby food
27 products many years before Plaintiff was born.

28 237. As experts in baby food manufacturing, Amazon and Whole Foods knew or are
presumed to have known of the defects featured in the Baby Food products at issue and their

1 dangerous heavy metal content. Experts in this field were well aware of the industry-wide problem
2 regarding heavy metals in baby food long before the Congressional report brought the issue to the
3 public.

4 238. Despite knowledge of the defective condition of the Baby Food products, Amazon
5 and Whole Foods failed to declare the defect to Plaintiff.

6 239. At all times, the Baby Foods were used in a reasonably anticipated or intended
7 manner.

8 240. As a direct and proximate result of the Retailer Defendants' conduct, Plaintiff was
9 injured and sustained severe and permanent injuries, pain, suffering, disability, impairment, loss
10 of enjoyment of life, economic loss, and damages including, but not limited to, medical expenses,
11 lost income, attorneys' fees, and other damages to be more fully shown at trial of this matter.

12
13 **JURY TRIAL DEMAND**

14
15 241. Plaintiff demands a trial by jury on all the triable issues within this pleading.
16

17
18 **PRAYER FOR RELIEF**

19 242. WHEREFORE, Plaintiff prays for judgment against Defendants as follows:
20

21 a. actual or compensatory damages in such amount to be determined at trial and as
22 provided by applicable law, including but not limited to:

- 23 i. past, present, and future physical pain and suffering;
24 ii. past, present, and future mental anguish and emotional distress;
25 iii. past, present, and future medical expenses;
26 iv. damages occasioned by temporary and/or permanent disability;
27 v. loss of wages and loss of earning capacity;
28 vi. economic loss;
vii. loss of enjoyment of life, past and future.

EXHIBIT A

List

Browse Products

Order Online

Recipes

Weekly Sales

Find a Store

List Login

Foggy Bottom

| Open: 7 am – 10 pm today

[Home](#) / [Quality Standards](#) / Food Ingredient Quality Standards

Food Ingredient Quality Standards

We ban 230+ ingredients from all food that we sell, including hydrogenated fats, high-fructose corn syrup and sweeteners such as aspartame, sucralose and saccharin.



We believe that the best ingredients belong on your plate. That's why we've banned hydrogenated fats, high-fructose corn syrup, sweeteners like aspartame, sucralose and saccharin — along with more than 230 colors, preservatives,

flavors and other ingredients from *all* of the food we sell in our stores. Seriously — from **Berry Chantilly Cake** in our bakery to the foods in our **bulk bins**, we want you to feel confident about what goes in your cart. If it doesn't meet our standards, we won't sell it.

Higher Food Ingredient Standards

From the first day we swung open our doors in September 1980, steadfast and selective have underpinned the attitude behind the standards of the products we sell — and love. When we review ingredients, we consider the interconnected effects of the way that food is processed and regulated by authorities in the U.S., EU, Canada and beyond. All of this happens before hitting our shelves and ultimately your plate.

The food industry evolves and changes rapidly, and we strive to respond by following emerging research and our customers' expectations. Over the years, we've achieved some major milestones in what we restrict, including banning added MSG in 1992, hydrogenated oils in 2003 and high-fructose corn syrup in 2011.

Below are a few commonly used additives you won't find in our stores.

Partially-Hydrogenated oils

Until recently, ingredients like margarine and shortening-baked goods (like pastries, pies, cookies and snack foods) often contained partially hydrogenated oils. These oils are chemically altered additives designed to improve texture and prolong shelf life — primarily in conventional processed foods. Studies have shown that the trans fats in partially hydrogenated oils raise LDL (bad) cholesterol levels, decrease HDL (good) cholesterol and increase the risk of heart disease. In 2015 the FDA released its final determination that partially hydrogenated oils are not “generally recognized as safe”. As of January 1, 2020, manufacturers cannot add PHOs to foods. That's been our stance for more than 15 years.

FD&C Colors

The Food and Drug Administration breaks color additives into two distinct categories. Exempt colors — most of which we permit — include pigments from sources such as vegetables, minerals and animals. Think dehydrated beets and grape skin extract.

The other category, certified color additives, are synthetic colors like FD&C Yellow No. 6 — which we do not permit — are the additives widely used for intense, uniform color and flexibility in making a variety of hues. These synthetics must undergo batch certification, whereby FDA chemists test composition to ensure they do not contain impurities at levels that pose a health concern. Color additives subject to certification are typically made from raw materials obtained from petroleum.

Preservatives

Shelf life — that's the primary reason preservatives are added to foods. Canning, heating, pasteurizing, drying and pickling are all ways to preserve food. We also allow certain added preservatives like citric acid and cultured dextrose. Preservatives undergo consideration on a case-by-case basis, weighing the benefits and drawbacks.

For example, we allow sulfites in wines, where they may be present naturally in the grapes, or are added to ensure longevity in the bottle. We do not allow sulfites on dried fruits, where they're often used to prevent browning.

Sweeteners

We have a long history of working to ban sweeteners from food we sell in our stores. Aspartame, for one. When aspartame was approved by the FDA for food, we looked at technical information and considered our customers' expectations. Based on that research, we added aspartame to our list of unacceptable ingredients for food, and have banned these other sweeteners as well:

- Acesulfame-K
- Advantame
- Aspartame
- Aspartame-acesulfame salt
- Cyclamates (*not available at other grocery retailers in the U.S. since it is prohibited in U.S. by FDA*)
- Neohesperidine dihydrochalcone
- Saccharin
- Sucralose

Flour

A staple baking item that shouldn't be overlooked, many all-purpose white flours are bleached with benzoyl peroxide or bromated with the addition of potassium bromate. These agents chemically age and strengthen gluten, and increase the rise and elasticity of dough. We don't think it's necessary, just a shortcut. Humans have been baking great things with unbromated flour for millennia. While a definitive finding on health risks is yet to be reached, bromate is currently banned in the EU and Canada, among other places.

Ingredients We Don't Allow in Our Food

The list of no-gos. It can be a difficult process, and the answers are not always easy, but we know our food ingredient standards are part of how we've changed the way food is grown, raised, processed and experienced around the world.

Banned Ingredients

2,4,5-trihydroxybutyrophenone (THBP)	5-HTP	acesulfame-K
acetoin (synthetic)	acetone peroxides	acetylated esters of mono- and diglycerides
activated charcoal	alkanna tinctoria	advantame
aluminum ammonium sulfate	aluminum potassium sulfate	aluminum starch octenylsuccinate
aluminum sulfate	ammonium alum	ammonium chloride
ammonium saccharin	ammonium sulfate	apricot kernel/extract
aspartame	azo dyes	azodicarbonamide
Bacillus coagulans Unique IS-2	Bacillus coagulans ProDURA UABc-20	bacopa
bentonite	benzoates	benzoic acid
benzophenone	benzoyl peroxide	benzyl alcohol
Benzyl benzoate	beta-cyclodextrin	BHA (butylated hydroxyanisole)
BHT (butylated hydroxytoluene)	black soldier fly	bleached flour
bromated flour	brominated vegetable oil	burnt alum
butylparaben	caffeine (extended release)	calcium benzoate

Banned Ingredients

calcium bromate	calcium disodium EDTA	calcium peroxide
calcium propionate	calcium saccharin	calcium sorbate
calcium stearoyl-2-lactylate	canthaxanthin	caprocaprylobehenin
carmine	CBD/cannabidiol	certified colors
charcoal powder	Citrus Red No. 2	cochineal
DATM	diacetyl (synthetic)	dimethyl silicone
dimethylpolysiloxane	dioctyl sodium sulfosuccinate (DSS)	disodium 5'-ribonucleotides
disodium calcium EDTA	disodium dihydrogen EDTA	disodium EDTA
disodium guanylate	disodium inosinate	dodecyl gallate
EDTA	erythrosine	ethoxyquin
ethyl acrylate (synthetic)	ethyl vanillin (synthetic)	ethylene glycol
eugenyl methyl ether (synthetic)	FD&C Blue No. 1	FD&C Blue No. 2
FD&C Colors	FD&C Green No. 3	FD&C Red No. 3
FD&C Red No. 40	FD&C Yellow No. 5	FD&C Yellow No. 6
foie gras	gamma aminobutyric acid	gardenia blue

Banned Ingredients

Garcinia cambogia	Ginkgo biloba	GMP
gold/gold leaf	Grapefruit seed extract	Hawaiian black salt
He shou wu	heptylparaben	hexa-, hepta- and octa-esters of sucrose
high-fructose corn syrup/HFCS	hijiki	hydrogenated oils
inosine monophosphate	insect Flour	iron oxide
kava/kava kava	lactic acid esters of monoglycerides	lactylated esters of mono- and diglycerides
ma huang	mechanically separated meat	melatonin
methyl silicon	methylparaben	microparticulated whey protein derived fat substitute
monoammonium glutamate	monopotassium glutamate	monosodium glutamate
mucuna pruriens	myrcene (synthetic)	Nature identical flavors
natamycin (okay in cheese-rind wax)	neotame	nitrates (synthetic)
nitrites (synthetic)	octyl gallate	olestra
Orange B	partially hydrogenated oils	plant sterols

Banned Ingredients

polydextrose	potassium alum	potassium benzoate
potassium bisulfite (okay in wine, mead, cider)	potassium bromate	potassium metabisulfite (okay in wine, mead, cider)
potassium nitrate	potassium nitrite	potassium propionate
potassium sorbate	propane-1,2-Diol esters of fatty acids	propionates
propionic acid	propyl gallate	propylene glycol esters of fatty acids
propylene glycol mono- and di-esters of fats and fatty acids	propylene oxide	propylparaben
pulegone (synthetic)	pyridine (synthetic)	saccharin
saccharin sodium salt	salatrim (short and long chain acyl triglyceride molecule)	shark cartilage
smoke flavor (synthetic)	sodium acid sulfate	sodium alum
sodium aluminum phosphate	sodium aluminum sulfate	sodium benzoate
sodium bisulfite (okay in wine, mead, cider)	sodium cyclamate	sodium diacetate
sodium lauryl sulfate	sodium metabisulfite (okay in wine, mead, cider)	sodium nitrate/nitrite (synthetic)
sodium propionate	sodium saccharin	sodium sorbate

Banned Ingredients

sodium stearoyl lactylate	sodium stearoyl-2-lactylate	sodium sulfite (okay in wine, mead, cider)
sorbic acid	soy leghemoglobin	stannous chloride
succistearin	sucralose	sucroglycerides
sucrose acetate isobutyrate	sucrose ester	sucrose polyester
sulfites (okay in wine, mead, cider)	sulfur dioxide (okay in wine, mead, cider)	TBHQ (tertiary butylhydroquinone)
tetrasodium EDTA	thiodipropionic acid	toluene
tonka bean/extract	vanillin (synthetic)	whale oil

Note to product suppliers: This list is intended for our shoppers. It's not for use in formulating products as it doesn't include all Whole Foods Market requirements and ingredient restrictions. Creating a product with no unacceptable ingredients does not guarantee that we will sell it.

Explore More



**A Guide to Reading
Organic Labels**



**What Makes Our Lamb
Different**



**Seafood Standards Like
Nowhere Else**



**Our Standards:
Household Cleaning
Products**

EXHIBIT B



CODE of Business Conduct

August 22,
2019



This Code of Business Conduct (the “Code”) applies to all Team Members, Board Members, consultants, contractors and agents of Whole Foods Market, Inc. and its subsidiaries (“WFM” or the “Company”).

The Code does not cover all relevant laws or WFM policies. Other Company policies and procedures, such as those found in the central or regional General Information Guides, the Amazon.com Insider Trading Guidelines applicable to Whole Foods Market and the Company Anti-Bribery Policy, supplement the policies in this Code.

The information contained in the Code is not a contract or an offer of a contract. **Violation of this Code may result in corrective action up to and including discharge.** The terms of the Code concerning the employment relationship are implemented at the sole discretion of WFM and may be withdrawn or changed at any time with or without notice.

WFM expects all of its Team Members and Board Members to act in accordance with the highest standards of personal and professional integrity at all times, and to comply with WFM’s policies and procedures and all laws, rules and regulations of any applicable international, federal, provincial, state or local government.

Team Members who have questions about the Code should contact their Team Leader or email the Ethics Committee at ethics@wholefoods.com unless a particular provision of the Code says otherwise.

To report concerns about potential violations of the Code and any other ethics or integrity issues, including questions or concerns involving the Company’s accounting, auditing, financial reporting or internal controls, Team Members should contact their Team Leader, email the Ethics Committee at ethics@wholefoods.com, or call the Team Member Tipline.

Calls to the Team Member Tipline may be made confidentially and anonymously.

Executive officers and Board Members should contact the General Counsel to raise questions or report a potential Code violation or ethical issue.

Company policy prohibits retaliation against individuals who report violations of this Code.

**Any WFM Team Member
in the U.S. or Canada may
confidentially and
anonymously report ethics
matters by calling the
Team Member Tipline at
1-844-470-6772.**

**U.K. Team Members can
do the same by calling
0808-234-3523.**

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Message from Whole Foods Market's CEO



Whole Foods Market strives to maintain the highest standards in all of our interactions with Company customers, Team Members and vendors. Our statement of Core Values (see Appendix) also reflects our commitment to all our stakeholders: our customers, our Team Members, our stockholder, and our community and environment.

As Whole Foods Market continues to grow, each of us is personally responsible to support our mission and Core Values. We have issued this Code of Business Conduct to restate our longstanding commitment to follow the law and to act ethically in all situations. The Code is intended to provide guidance to all Whole Foods Market Team Members and members of the Board of Directors, as well as consultants and agents doing business for WFM. Please review this Code carefully and be sure that you understand it. If you have questions, please ask your Team Leader or contact the Ethics Committee directly by email at ethics@wholefoods.com.

Thank you in advance for your help in making sure that we continue to live up to our high ethical standards.

Best regards,

A handwritten signature in black ink that reads "John Mackey". The signature is written in a cursive, flowing style.

John Mackey

ABOUT THE CODE OF BUSINESS CONDUCT

Purpose

The Code of Business Conduct ("the Code") is designed to promote a responsible and ethical work environment for all Whole Foods Market ("WFM" or the "Company") Team Members and members of the WFM Board of Directors ("Board Members"). The Code contains guidelines on proper behavior in the workplace and contact information to be used in the event you have questions or concerns (see "Whole Foods Market Contact Information" at the end of the Code). The Code applies to all WFM Team Members and Board Members. The Code also applies to third parties doing business on behalf of WFM, such as consultants, contractors and agents. If you hire a third party, you should take reasonable steps to ensure the third party is aware of the Code, has a reputation for ethical behavior, and acts in a manner consistent with the Code.

Your Responsibilities

In performing your duties for WFM, you are responsible for abiding by WFM policies and all local and national laws in all countries in which the Company does business. You are also obligated to comply with all other applicable laws, rules and regulations of any regulatory organization, licensing agency, or professional association governing your professional activities. You are responsible for knowing and following the laws and policies that relate to your duties, including the policies in the Code and all other Company policies, such as those found in the General Information Guide ("GIG"). If you have questions about specific laws that may apply to your activities or about whether particular circumstances may involve illegal conduct, contact the WFM General Counsel. You should also contact the General Counsel if you think a provision of this Code may conflict with an applicable legal requirement or a provision in the GIG or another Company policy.

Violating the Code or other Company policies may result in corrective action up to and including discharge, and WFM may seek to recover damages or file criminal charges. However, most problems can be easily avoided by simply using good judgment and seeking guidance when questions arise. It is your responsibility to raise questions, make appropriate disclosures and bring potential problems to the Company's attention.

Obtaining Additional Information

If you have questions about the policies outlined in the Code or would like additional information, talk with your Team Leader, or contact the Ethics Committee directly by email at ethics@wholefoods.com unless a particular provision of the Code says otherwise. Executive officers and Board Members should contact the General Counsel.

Reporting Code Violations

As part of our shared fate philosophy, we believe that we all share responsibility for ensuring that WFM as a whole conducts itself according to the highest ethical standards and strives to avoid even the appearance of impropriety. If you know of or suspect a violation of the Code, you must report it through one of the means provided in the Code. You may report suspected violations of the Code, and any other ethics or integrity issues, to your Team Leader, by email to the Ethics Committee or by calling the Team Member Tipline. The Team Member Tipline can also be used to report questions or concerns involving the Company's accounting, auditing, financial reporting or internal controls. Reports to the Tipline may be made confidentially and anonymously, although you are encouraged to provide your name to facilitate investigation and follow-up. Neither your Team Leader nor the Company will take any action against you for reporting suspected misconduct in good faith. Information about how to contact the Ethics Committee and the Team Member Tipline appears under "Whole Foods Market Contact Information" at the end of the Code along with other important contact information.

If you are an executive officer or Board Member, you should contact the General Counsel.

Reports of potential misconduct will be taken seriously and investigated promptly and thoroughly. Except where disclosure is required to investigate a report or by applicable law or legal process, all reports will be kept confidential to the extent reasonably possible.

Open Door Communications Policy

As described in the GIG, it is WFM's policy that you have the right to speak with anyone in the Company about your concerns. If you have questions about the Code, we encourage you to discuss with your Team Leader or raise it through one of the other means described in the Code. Team Leaders must maintain this "open door" policy for any Team Member who has a question or wishes to raise a concern.

No Retaliation

It is against Company policy, and in some cases against the law, for the Company to take any action against a Team Member or a Board Member, vendor or agent of the Company for reporting or threatening to report a violation of this Code or cooperating in investigations relating to Code violations, provided that the person has acted in good faith and with a reasonable belief that the information provided is true.

Waivers

Waivers of this Code will be granted only in exceptional circumstances. The provisions of this Code may only be waived by the Ethics Committee or, in the case of executive officers and Board Members, by our Board of Directors or an appropriate Board committee. Any waiver of this Code for an executive officer or Board Member will be promptly disclosed in accordance with applicable legal requirements. Waiver requests must include the relevant details and facts supporting the request.

Ethics Committee

The Ethics Committee is responsible for setting policy, reviewing questions and issues submitted by Team Members or others, and promoting awareness of and compliance with the Code of Business Conduct throughout the Company. Although membership may vary over time, the Committee is generally comprised of Global Support leaders in various areas of operations. Team Members may contact the Ethics Committee directly by email. See page 14 of this Code for contact information.

CONFLICTS OF INTEREST

General

All business decisions should be made solely in the best interests of the Company, not for personal benefit. Therefore, you should avoid any actions that create, or appear to create, conflicts of interest with the Company. A "conflict of interest" may occur when an individual's own interests (including the interests of a family member or an organization with which an individual has a significant relationship) interfere or appear to interfere with the interests of the Company.

Many conflicts of interest or potential conflicts of interest may be resolved or avoided if they are appropriately disclosed and approved. In some instances, disclosure may not be sufficient and the Company may require that the conduct in question be stopped or that actions taken be reversed where possible.

Questions about potential conflicts of interest and disclosure of these situations as they arise should be directed to the Ethics Committee or your Team Leader or Team Member Services representative. Executive officers and Board Members should contact the WFM General Counsel.

While it is not possible to list all potential conflicts of interest, several examples of different situations are presented in the sections below. Regional policies may also apply to the situations described below, and Team Members should consult their GIG for information about any such policies.

Gifts & Entertainment

Team Members and Board Members should not give anything of value to anyone, or accept anything of value from anyone, when doing so might compromise or appear to compromise the objectivity of business decisions. Except as specifically noted below, this includes giving to, or accepting from, a current or prospective supplier, vendor, vendor representative (including but not limited to organizations representing multiple vendors or producers, such as a regional food group), landlord or competitor of the Company any gifts, entertainment, travel, or any form of compensation. Team Members are prohibited from receiving any samples or gifts at home – all samples and gifts must be sent to their primary work location. Team Members and Board Members are prohibited from accepting any loans or services from any WFM vendor who is not otherwise in the business of providing such loans or services, and any such loans or services provided must be provided on fair market value terms. Team Members and Board Members are prohibited from buying products directly from any WFM vendor at a discounted rate not available to all Team Members.

Some gifts, entertainment and other forms of compensation are allowed as follows:

- (1) Gifts with an established value of \$25 or less are generally allowed.
- (2) Business-related meals of nominal value are allowed if they are reasonable and customary and occur infrequently.
- (3) Gift baskets or flowers may be accepted within reason, but they must be made available for sharing with everyone at the Team Member's store or location.
- (4) Promotional items, such as those bearing a vendor's logo, may be accepted up to total estimated value of \$25.

EXAMPLES

Question: A Vendor offered me a ticket to a sporting event that the vendor is also planning to attend. Can I accept it? It is part of a season ticket package that the vendor purchased for client entertainment.

Answer: Accepting a gift valued at U.S. \$25 or more from a vendor is a violation of Company policy. You may not accept the ticket if the face value of the ticket is \$25 or more. You should either decline the ticket or give the vendor a personal check for the full face value of the ticket. In any event, you should advise the vendor about our policies regarding conflicts of interest.

Question: A vendor typically sends me a holiday gift basket which, while not extravagant, likely costs more than \$25. What should I do with it?

Answer: You may accept the gift basket as long as it would be considered of nominal value, but you should share the contents with everyone at your location. A gift basket with extravagant items should be returned to the sender, with an explanation of our policies regarding conflicts of interest.

Question: A vendor has offered to provide logo items (shirts, golf balls, etc.) to be given as prizes for our region's annual golf outing. The total value of the prizes will not exceed \$25/person when considering the number of Team Members that will attend the outing. Is this permissible?

Answer: Yes. The value of these items taken together will not exceed \$25/person and therefore may be accepted. No vendor should ever be solicited to provide gifts of this type.

- (5) Existing Team Members may accept samples of new or reformulated products, and new Team Members may accept samples of existing products (one time only). It is not acceptable for Team Members to receive for their personal use multiple samples of the same product from a vendor.
- (6) Travel and other expenses paid for by a consortium of vendors or a trade association/organization is allowed if approved by a Global Vice President or Regional President or above and advance notice is sent to ethics@wholefoods.com to allow for the Ethics Committee to confirm that the exception applies.
- (7) Travel and other expenses paid for by a government agency or organization is allowed if approved by a Global Vice President or Regional President or above and the General Counsel and advance notice is sent to ethics@wholefoods.com to allow for the Ethics Committee to confirm that the exception applies.

For purposes of examples #5 and #6, allowable expenses would be expected to include, as applicable, transportation, lodging, food, conference admission and/or continuing education/classes, and/or reasonable incidentals.

If someone tries to give you a prohibited gift, you should also tell your Team Leader. Then, either return the gift or personally reimburse the giver of the gift for its full value.

EXAMPLES

Question: A Team Member on the Front End team creates greeting cards which he sells to the Whole Body team. Is this permitted under the code?

Answer: Yes. Since the Team Member is on a different team than the one purchasing the products this is a permitted situation, and it should be monitored by the STL and regional Whole Body Coordinator.

Question: An STL has a side business and has created a line of gourmet mustards that several stores in his region are interested in carrying. Is this permitted under the Code?

Answer: Yes. The STL's scope of making purchasing decisions is assumed to extend only to his own store, so he may sell to stores other than his own without conflict. To sell to his own store, he must first obtain the approval of the Ethics Committee.

Question: The regional Construction Coordinator's brother is a carpenter and has bid on some millwork being installed in several stores during their remodels. If his is the winning bid, would he be permitted to do the work under the Code?

Answer: No. Assuming the Construction Coordinator has oversight of the remodels including making purchasing decisions, this would be considered a conflict that would not be permitted under the Code.

Doing Business with Spouses, Relatives, Friends or Your Own Business

Team Members and Board Members should not use their positions at WFM for personal gain. Generally, it is not permissible to conduct business with a Team Member or Team Member's spouse, relatives or friends if the Team Member's role allows him or her or a Team Member that he or she directly supervises to make purchasing decisions for the team, store, facility or region where he or she works. Team Members with any concerns about improper influence are encouraged to contact the Ethics Committee, or, if the situation involves a member of the Whole Foods Leadership Network (WFLN) or a Board Member, the WFM General Counsel. Other Team Member/vendor relationships should be evaluated as follows to determine whether they are permitted:

a) ***Investment in a company that is a vendor*** – This is allowed as long as the Team Member or someone the Team Member directly supervises does not make the purchasing decisions surrounding these products.

b) ***Team Member has a business and sells products or services to WFM*** – This is allowed as long as the Team Member or someone the Team Member directly supervises does not make the purchasing decisions surrounding these products or services. For example, it would be allowed for a frontend Team Member to sell products to the grocery team as long as the Team Member does not impact grocery purchases.

Team Members with any concerns about improper influence are encouraged to contact the Ethics Committee, or, if the situation involves a member of WFLN or a Board Member, the WFM General Counsel.

For permitted situations, it may be necessary to inform the Store or Facility Team Leader and appropriate regional coordinator so that they may monitor and evaluate any relevant changes in circumstances. Board Members and Team Members are prohibited from being involved in any formal or informal negotiations or related discussions between WFM and a vendor when the Board Member or Team Member has any employment relationship, board membership or direct or indirect ownership interest in the vendor.

Additionally, it is considered a conflict of interest for any Board Member or WFLN member, or his or her spouse or child, to hold a 5% or greater investment interest in any vendor, lender, or major customer of WFM unless approved by the WFM General Counsel with advice from the Ethics Committee. It is also considered a conflict of interest for any Board Member or WFLN member, or his or her spouse or child, to actively engage with WFM on behalf of a vendor (they actively own or merely work for) unless approved by the WFM General Counsel with advice from the Ethics Committee.

Team Members (other than executive officers) may apply to the Ethics Committee for approval of particular transactions or situations, and executive officers and Board Members may apply to the WFM General Counsel.

Certain Outside Employment or Service as Director or Officer

Except in situations permitted under the section above entitled "Doing Business with Spouses, Relatives, Friends or Your Own Business" or under the Moonlighting Policy or other WFM policies approved by the WFM executive team, the Ethics Committee must approve any circumstance in which a Team Member (other than an executive officer) serves as an employee, director, officer, partner, agent or consultant to any WFM vendor, lender or competitor (as defined below). The WFM General Counsel must approve of any circumstance in which an executive officer serves as an employee, director, officer, partner, agent or consultant to any WFM vendor, lender or competitor.

Team Members may serve on the board of a not-for-profit organization without prior approval, as long as the organization does not have a relationship with WFM that creates a conflict of interest. A Team Member serving on such a board should be aware of Company policies regarding donations and other payments, which are discussed below. Notwithstanding the foregoing, Team Members do not need prior approval to serve on the boards of WFM's foundations.

Any member of the Board of Directors wishing to serve as an employee, director, officer, partner, agent or consultant to any WFM vendor, lender or competitor must obtain approval from the WFM General Counsel.

Financial Interest in a Competitor

A conflict may exist if a Team Member or Board Member (or any of their immediate family) holds a financial interest in a competitor, other than a financial interest which constitutes not more than 5% of the outstanding voting securities of a competitor. Team Members should contact the Ethics Committee for guidance on whether a particular financial interest represents a conflict of interest. Executive officers and Board Members should contact the WFM General Counsel. For purposes of this Code, except for Amazon.com and its direct and indirect subsidiaries, a business shall be a 'competitor' if it is engaged in the ownership or operation of any retail supermarket, retail food store, retail natural food enterprise, grocery delivery, or other retail/grocery delivery outlet associated with natural foods; it being understood that a business which is predominately manufacturing or wholesaling in foods with less than 10% of their revenue derived from retail sales, or which is a restaurant business, shall not be deemed competitive.

Donations and Other Payments

Team Members and Board Members are prohibited from authorizing donations or other payments from WFM to outside organizations such as not-for-profits with which they or a member of their immediate family serve as an officer or employee. Additionally, any WFM donation in excess of \$50,000 per year shall be approved by two or more of the Company's executive officers. No contributions, gifts or payment may be made from WFM to any political party or candidate without the prior approval of the CEO. No payments may be made from WFM to any lobbying firms for the purpose of lobbying on WFM's behalf without the prior approval of the CEO.

Opportunities Related to the Company's Business

Team Members and Board Members may not take for themselves opportunities related to the business of WFM or opportunities that they discover through their positions with WFM or through the use of WFM property or information.

Extensions of Credit

Team Members and Board Members are prohibited from extending any form of credit from WFM to any organization with which they or a member of their immediate family have a personal affiliation. Further, no extension of credit from WFM may be made to any organization without the specific prior approval of the CEO. The only exceptions to this rule are accounts receivable from customers arising in the ordinary course of business and loan programs previously approved by the CEO.

Leasing Property and Equipment

Any property or equipment lease between WFM and a Team Member (other than a member of the executive team, which is dealt with in the following paragraph) or the Team Member's immediate family or any organization with which they are affiliated other than Amazon.com must be approved by the Ethics Committee.

Any property or equipment lease between WFM and a Board Member, a member of the executive team, the executive's or Board Member's immediate family, or any organization with which they are affiliated other than Amazon.com must be approved by the WFM General Counsel.

Consulting and Other Professional Services

Team Members and Board Members are prohibited from providing consulting or other professional services to WFM for payment outside of their normal compensation.

Any situation in which WFM would retain the services of a professional services firm with which a Team Member (other than a member of the executive team, which is dealt with in the following paragraph) or a Team Member's immediate family is affiliated must be approved by the Ethics Committee.

Any situation in which WFM would retain the services of a professional services firm with which a Board Member, a member of the executive team, or a Board Member's or executive's immediate family is affiliated must be approved by the WFM General Counsel.

Examples of professional services include (but are not limited to) accounting, auditing, architectural or design, engineering, investment or commercial banking, legal services, project management and computer programming.

LEGAL COMPLIANCE

Bribes and Improper Payments

WFM has enacted an Anti-Bribery Policy which applies to all Team Members, Board Members and agents and representatives of WFM. No Team Member or third party acting on WFM's behalf may offer, give or receive a bribe under any circumstances. This applies to every Team Member at every level at every location. A bribe is not limited to a cash payment. Bribes can also include anything of value, such as discounts, services, gifts, charitable or political contributions, travel, and excessive meals and entertainment. Bribery is not only prohibited under WFM's policy, but it is also against U.S. law and against the law in some countries where WFM does business.

If a vendor or government official implies that a bribe is just the way business gets done in his or her country, the answer is simple: WFM does not do it. WFM has the same standards for international business that we do for business we conduct in the U.S.

WFM could be responsible for the actions of third parties acting on its behalf. Accordingly, all contracts or arrangements with third parties acting on behalf of WFM must be conducted with due diligence to ensure that the third party is capable of complying with WFM's Anti-Bribery Policy.

Team Members, Board Members and agents and representatives of WFM should consult and comply with the WFM Anti-Bribery Policy. Any Team Member, Board Member or agent or representative of WFM who knows of or suspects any non-compliance with the Anti-Bribery Policy or any applicable anti-bribery law should report the incident or suspicion to the General Counsel or anonymously via email to ethics@wholefoods.com.

EXAMPLE

Question: Can I tip a local government office worker for agreeing to process our application for a permit needed to open a new store more quickly?

Answer: No. You may not tip any government worker in any country.

Antitrust Laws

Team Members are required to comply with the antitrust and competition laws of the countries where we do business. In general, WFM Team Members must avoid agreements, understandings or plans with competitors that limit or restrict competition, including price fixing and allocation of markets.

Fair Dealing

Team Members and Board Members should always deal fairly with WFM's customers, suppliers, vendors, competitors and employees. They should not take unfair advantage of anyone through manipulation, concealment, abuse of confidential information, falsification, misrepresentation of material facts or any other practice involving intentional unfair dealing. This provision does not alter existing legal relationships between the Company and its Team Members, including any at-will employment arrangements.

Complaints to Government Agencies

Occasionally, a job applicant, customer, or current or former Team Member may file or threaten to file a complaint against WFM with the government. If a Team Member or Board Member is notified about such a complaint, they should immediately contact the General Counsel.

Workplace-Related Laws and Policies

Team Members should consult the GIG for information regarding the Company's equal employment opportunity policy and compliance with other employment-related laws and policies such as the Immigration Reform and Control Act of 1986, as well as Company policy on drugs and alcohol, workplace violence, weapons, harassment, open door communications, solicitation and distribution, and nepotism and favoritism.

COMPANY INFORMATION AND ASSETS

Confidentiality

Team Members and Board Members are expected to protect confidential or proprietary information about WFM, Amazon.com or its subsidiaries, to use this information only for business purposes, and to limit dissemination of the information (both inside and outside WFM, Amazon.com, and its subsidiaries) to those who have a need to know the information for business purposes.

Team Members and Board Members are also expected to protect any confidential or proprietary information that comes to them, from whatever source, in the course of performing their responsibilities for WFM. This includes information received from or relating to third parties (such as vendors) with which WFM has or is contemplating a relationship.

Confidential or proprietary information includes all non-public information relating to WFM, Amazon.com and its subsidiaries or a third party. Examples include material non-public information about store operating results, new store development plans, and most Team Member information. If you are unsure whether information is confidential, contact your Team Member Services representative or email the Ethics Committee. Team Members should consult the GIG for information about additional policies on confidentiality.

Insider Trading Policy

Federal and state laws prohibit trading in securities by persons who have material information that is not generally known or available to the public.

Team Members may not a) trade in stock or other securities while in possession of material nonpublic information or b) pass on material nonpublic information to others without express authorization by Amazon.com or recommend to others that they trade in stock or other securities based on material nonpublic information.

Amazon.com has adopted guidelines designed to implement this policy. All Team Members are expected to review and follow the Amazon.com Insider Trading Guidelines applicable to Whole Foods Market. Certain Team Members must comply with trading windows and/or preclearance requirements when they trade Amazon.com securities.

Media Inquiries

Team Members may not speak to reporters or members of the media on behalf of the Company without going through the proper channels, as doing so may risk providing incorrect information or revealing proprietary strategies. Inquiries made to Team Members from members of the media should be directed to your Regional Marketing Coordinator, Regional PR contact, or to the Global Communications Team.

Board Members should consult the Director Media Policy prior to speaking with any reporter or member of the media about the Company.

Online Forums

The Company realizes the importance of communicating proactively and responsively on the Internet and at the same time the importance of communicating responsibly—i.e., avoiding misrepresentations of facts as well as the intentional or inadvertent violation of laws, regulations or company policies. Accordingly, we have a strict policy regarding postings by Company Leadership to non-Company-sponsored Internet chat rooms, message boards, web logs (blogs), or similar forums, concerning any matter involving the Company, its competitors or vendors, as follows:

- Postings by a member of Company Leadership must be approved by Chief Financial Officer or General Counsel. A posting by any of these three individuals must be approved by one of the other two.
- Any postings which refer to a governmental agency or any legal matter must be approved by the General Counsel.
- Postings made anonymously, under a screen name or through another person are prohibited.

Violation of this policy will be grounds for dismissal. For purposes of this policy, "Company Leadership" includes each Company Board Member, executive team member, Global Vice President and Regional President. For other Team Members, other policies may apply and they should consult their GIG.

Financial Integrity; Maintaining Books and Records

Accurate records are essential to the successful operation of WFM. Team Members are responsible for preparing accurate and complete Company records, information and accounts. For example, claims on an expense report or time record, payments and other transactions must be correctly recorded and accounted for, and properly authorized in accordance with Company policies.

All business records should be clear, truthful and accurate. Keep in mind that business records and communications may become subject to public disclosure through government investigations, litigation or the media. Business records are Company assets and must be retained or destroyed in accordance with applicable policy.

Team Members must act to promote full, fair, accurate, timely and understandable disclosure and reporting of Company information, including the Company's financial results and financial condition, in reports and documents that the Company or Amazon.com files with or submits to the Securities and Exchange Commission and other government agencies, and in the Company's and Amazon.com's other public communications. All Team Members must comply with Company policies, procedures and controls designed to promote accurate and complete recordkeeping. Accounting for, and financial reporting of, actual transactions and forecasts must follow the Company's accounting policies as well as all applicable generally accepted accounting principles and laws.

If you have questions or concerns about the Company's accounting, auditing, financial reporting or internal controls, you may contact your Team Leader, email the Ethics Committee or call the Team Member Tipline.

No Improper Influence on Audits

All Team Members and Board Members are expected to cooperate fully with WFM's internal and external auditors. You must not directly or indirectly take any action to coerce, manipulate, mislead or fraudulently influence any public accountant engaged in the performance of an audit or review of WFM's financial statements. Further, any Team Member involved in the preparation of financial statements or WFM's independent audit should avoid a personal relationship with any member of the audit engagement team, other than a casual friendly relationship.

Company Property

WFM property (for example, inventory, supplies and equipment) should be used for business purposes. WFM property should be cared for and used responsibly, and it should be protected from misuse, improper disclosure, theft and destruction. Taking or using Company property of any value for personal purposes without appropriate permission from the Company is stealing. However, using WFM property (such as telephones, computers and fax machines) for incidental personal activities is permitted. Regional policies also apply to the use of various kinds of Company property, and Team Members should consult the GIG for information about these policies.

WHOLE FOODS MARKET CONTACT INFORMATION

Team Member Tipline for Team Members in the U.S. or Canada	1-844-470-6772
Team Member Tipline for Team Members in the U.K.	0808-234-3523
WFM Ethics Committee	ethics@wholefoods.com
CEO John Mackey	1-512-542-0215 john.mackey@wholefoods.com
WFM General Counsel	1-512-477-4455 legal@wholefoods.com
Corporate Communications Team	1-512-487-9333 media@wholefoods.com

APPENDIX

Our Core Values

Our Core Values reflect what is truly important to us as an organization. They represent our deeply held beliefs, and we use them to guide us fulfilling our mission and higher purpose as a company. Our six stated Core Values are as follows:

- We sell the highest quality natural and organic foods
- We satisfy and delight our customers
- We promote Team Member growth and happiness
- We practice win-win partnerships with our suppliers
- We create profits and prosperity
- We care about our communities and the environment

Our Quality Standards

Our unparalleled Quality Standards ensure that the food, supplements, body care and cleaning products we sell meet a higher standard. All Team Members are responsible for upholding our Quality Standards in their business practices and job duties. For an overview of our Quality Standards please see <https://www.wholefoodsmarket.com/quality-standards>.

Most Recent Code of Business Conduct Amendments

On August 22, 2019, Whole Foods Market amended the Code of Business Conduct to (1) update the conflict of interest provisions regarding Board members and WFLN members and their spouses and children (x) having an interest in WFM vendors, lenders and competitors and (y) doing business with WFM; (2) revise the section regarding outside employment or service with vendors so that it refers to the Moonlighting Policy and other policies; (3) update the policy regarding vendor-paid trips; (4) update the definition of a "competitor" of WFM; (5) clarify the policy regarding payments to lobbying organizations; and (6) make other minor changes.

EXHIBIT C

All Early Black Fr day Deals Hol day G ft Gu de Cl n c Whole Foods Pr me V deo



2 items
\$44.65

Happy Baby Organ cs Superfood Puffs, Var ety Pack, 2.1... > [Quest ons & Answers](#)



Happy Baby Organics Superfood Puffs, Variety Pack, 2.1 Ounce, Pack of 6 (Flavors may Vary)

by Happy Baby

Customer Questions & Answers

Find answers in product info, Q&As, reviews

arsen c

All Product Informat on **Customer Q&A's** Customer Rev ews

Q: The main ingredient is rice. Have you tested for arsenic?

A: H , Thank you for post ng your quest on. We do evaluate the batches of r ce that we are us ng n our rec pes. We know and are sens t ve to the fact that all r ce conta ns vary ng levels of arsen c. That s why t rema ns our pr or ty to m ndfully source all of our ngred ents and ensure they are acceptable for our l ttle ones. If you have any other quest ons, please reach out to us at parents@happyfamyorgan cs.com. Best, Laura [see less](#)

By [Happy Fam ly Brands](#) [Laura, C...](#) on March 11, 2020

Q: Anyone worried about the "concerning levels of arsenic, cadmium, and lead?"

A: H Amazon Customer,

As a company run by parents who are proud to feed our ch ldren the products that we make every day, we take th s top c very personally and ser ously, and can say w th the utmost confidence that all of our products are safe for bab es and toddlers.

We want to personally assure you that we would never put a product n the market, nor would we feed them to our own ch ldren f they were unsafe. We have a proact ve contam nant mon tor ng program to ensure that all of our products are safe for consumpt on. We have str ct, self mposed qual ty standards and proact ve test ng at that s done by accred ted expert laborator es. Prov d ng ch ldren w th safe, nutr t ous products that are mon tored for these harmful tox ns and contam nants s the reason our company ex sts! If you have any other quest ons, please feel free to reach out to us d rectly at parents@happyfamybrands.com.

Best, Laura [see less](#)

By [Happy Fam ly Brands](#) [Laura, C...](#) on August 21, 2018

[See other answers](#)

Q: What testing methods do you have in place to ensure FDA approved level of metal and arsenic?

A: H Andy S., F rst and Foremost, we can say w th the utmost confidence that all Happy Fam ly Organ cs products are safe for bab es and toddlers, and meet l m ts for m nerals and metals set by the FDA. To help prov de further clar ty around our standards, we are cont nuously updat ng our Qual ty & Food Safety webpage, found through our l nk:

<https://www.happyfamyorgan cs.com/qual ty and safety of our products/>. We hope th s helps to answer your quest ons. If you have other quest ons, please reach out to us d rectly! Best, Laura [see less](#)

By [Happy Fam ly Brands](#) [Laura, C...](#) on Apr l 14, 2021

Q: Does this contain arsenic and lead as per recent costumer data for baby food?

A: dont know

By [PN](#) on November 8, 2019

Q: Does this contain arsenic and lead as per recent costumer data for baby food?

A: I hope not! I fin shed them months ago. [see less](#)

By [Magda Dream](#) on October 18, 2019

Q: Do you test for heavy metals since you are using brown rice?

A: H , Thank you for reach ng out w th your quest on. As a company run by parents who are proud to feed our ch ldren the products that we make every day, we take th s top c very personally and ser ously and can say w th the utmost confidence that all of our products are safe for bab es and toddlers. We pr de ourselves on be ng at the forefront of mplement ng str ct qual ty standards n prov d ng clean, enl ghtened and nutr t ous offer ngs to bab es. The safety, health and wellness of our l ttle ones s, and has always been, an ntr ns c part of our DNA. Manag ng contam nant exposure s at the heart of our

business and is embedded into everything that we do. Our proprietary Quality and Food Safety program is designed to ensure that all our products are safe for every baby and toddler. We have strict, self-imposed quality standards and conduct proactive 3rd party testing of our products, which have always proven them to be safe for consumption. It is important to note that trace amounts of contaminants such as heavy metals like arsenic and lead, can often be found naturally in the environment, including in water and soil; so it is possible that small amounts can be present in some fruits and vegetables. Managing exposure to these naturally occurring substances is incredibly important to us. To limit the presence of these trace amounts in the products we manufacture, we source high quality, organic produce from trusted suppliers and farmers. We are committed to making certain that our products, including our Superfood Puffs are safe for consumption. If you have any other questions, please reach out to us directly at parents@happyfamilybrands.com. Best, Laura [see less](#)

By [Happy Family Brands](#) Laura, C... on December 13, 2019

Don't see the answer you're looking for? [Post your question](#)

Customers also asked






[When is the expiration date if I buy it now?](#) [When is expiration date?](#)

Is this the same as the ones bought in our local stores, Target/Publix? I noticed the packaging is different and the ones in stores have greener puffs.

[Can I feed puffs to my dogs?](#) [Are these dairy free?](#)

Customers who viewed items in your browsing history also viewed

Page 1 of 7

				
NHUHEQ Kids Baseball Jackets Boys Girls Fall Varsity Jacket Casual Lightweight Plain Cardigan School Coat 24	AZZ 4 Kids Girls Boys Baseball Contrast Jacket Varsity Style Coat B.B Long Sleeves Jacket Sports Activewear Age 2 13 Years 1,180	AWD's Hoods Boys' Varsity Letterman Jacket 913	DGSYSHML Kids Baseball Jackets Boys Girls Team Uniform Varsity Jacket Everyday Casual School Cotton Classic Clothing 22	LittleSpring Boys Girls Bomber Jacket Fall Lightweight Varsity Jacket Zip Up Thin 388
\$19.99-\$26.00	\$24.99	\$19.69-\$37.98	\$25.99	\$22.99-\$25.99

Best Sellers in Baby & Toddler Feeding Supplies

amazon

2 items
\$44.65





EXHIBIT D

All Early Black Fr day Deals Hol day G ft Gu de Cl n c Whole Foods Pr me V deo Amazon Bas cs

Early Black Friday deals are here

Grocery Deals Snacks ▾ Breakfast ▾ Warm Beverages Cold Beverages Cooking Staples ▾ Baby Food ▾ Candy & Chocolate ▾ Subscribe & Save

2 items
\$54.89



Baby Products › Feeding › Baby Foods › Snack Foods

Sponsored

Purchased 15 times.

Last purchased Dec 21, 2020

Flavor: Flavor Puffs Variety Packs [View order](#)

[Add to essentials](#)

[Set reminder](#)

Happy Baby Organics Superfood Puffs, Variety Pack, 2.1 Ounce, Pack of 6 (Flavors may Vary)

Visit the Happy Baby Store

6,933 ratings

| 86 answered questions

Amazon's Choice  for "happy baby puffs"

 Climate Pledge Friendly

Price: **\$24.07** (\$1.91 / Ounce)

Get 5% back (\$1.20 in rewards) on the amount charged to your Amazon Prime Rewards Visa Signature Card.

To use SNAP EBT, select one-time purchase

Flavor: **Flavor Puffs Variety Packs**

Apple & Broccoli
\$15.31
(\$1.22 / Ounce)

Banana & Pumpkin

Flavor Puffs Variety Packs
\$25.34
(\$2.01 / Ounce)

Kale & Spinach
1 option from \$32.22

Purple Carrot & Blueberry
3 options from \$32.65

Strawberry & Beet
\$41.43
(\$2.59 / Count)

Sweet Potato & Carrot

Subscribe & Save: 5%

\$24.07 (\$1.91 / Ounce)

You've unlocked extra savings on your next delivery. [Learn more](#)

First delivery on Dec 5
[change](#)

In Stock.

Qty: 1

Deliver every:

2 months (Most common)

[Set Up Now](#)

Ships from and sold by
Amazon.com

One-time purchase:
\$25.34 (\$2.01 / Ounce)

FREE delivery: Monday, Nov 21

Ships from: Amazon.com
Sold by: Amazon.com

[Add to essentials](#)

[Learn more about Your Essentials](#)

[Add to List](#)

[Add to Baby Registry](#)

[Add to Registry & Gifting](#)

Have one to sell?

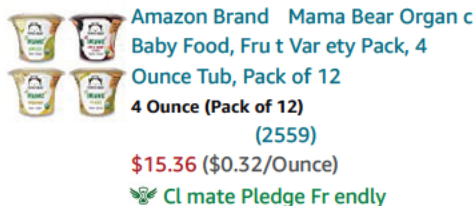
[Sell on Amazon](#)

- Superfood Puffs: Parents, meet your pint-size unsung hero Happy Baby Puffs are a melt in your mouth Organic Snack fortified with Choline for eye & brain health Irresistible in taste & texture, they're perfect for teaching babies tactile & self-feeding!
- Organic Snacks For Baby: Happy Baby goes beyond baby food with delicious, Superfood Puffs and freeze-dried yogurt snacks Babies may be ready for our delicious snacks when they can crawl on their hands and knees, without the rummy touch on the ground
- Happy Baby: We provide organic, delicious options for your baby's nutritional journey; Happy Baby offers baby food pouches, organic cereals, teething wafers, baby snacks and more made for your little one
- Happy Family Organics: We are on a mission to change the trajectory of children's health through nutrition; We provide age and stage appropriate premium organic food products for baby, toddler, and mama
- Our Happy Promise: All products are certified USDA organic, made with non-GMO ingredients grown without the use of toxic pesticides and packaging made without BPA, BPS, or phthalates

[Report incorrect product information.](#)

Similar item to consider

Amazon's Choice



9,902

Sponsored

Roll over image to zoom in

Frequently bought together



+



Total price: **\$44.64**

[Add both to Cart](#)

☒ This item: Happy Baby Organics Superfood Puffs, Variety Pack, 2.1 Ounce, Pack of 6 (Flavors may Vary) **\$25.34 (\$2.01/Ounce)**

☒ Happy Baby Organics Teether, 3 Flavor Variety Pack, 12 Count (Pack of 3) **\$19.30**

Products related to this item

Sponsored

amazon

2 items
\$54.89



Sponsored



Serenity Kids 6+ Months
Grain Free Puffs Toddler
& Baby Snack | No
Added Sugar, Glu...

2,191

\$32.95 (\$3.66/Ounce)

Climate Pledge Friendly



Happy Baby Organics
Snackers Baked Grain
Snack, 2 Flavor Veggie
Variety Pack, 1.5 O...

386

\$25.52 (\$4.25/Count)

Climate Pledge Friendly



Happy Baby Organics
Organic Teether Crackers
Gluten Free Strawberry
& Beet with Ama...

184

\$25.56 (\$2.51/Ounce)

Climate Pledge Friendly



Happy Baby Organics
Organic Snackers, Gluten
Free Baked Grain Snack,
Vegan Cheddar ...

6

\$23.94 (\$3.99/Count)

Climate Pledge Friendly



Awsumb Snacks Quinoa
Baby Puffs Healthy Kid
Snack Essential Baby
Food USDA Org...

33

\$33.99 (\$1.89/Ounce)

Climate Pledge Friend



Climate Pledge Friendly

Climate Pledge Friendly uses sustainable certification to highlight products that support our commitment to help preserve the natural world. [Learn more](#)

Product Certification (1)



USDA Organic products are grown
and processed according to
standards addressing soil and water
quality, among other factors.

From the manufacturer



GET TO KNOW OUR PUFFS!



For crawling
baby



25mg of choline,
an essential nutrient
for baby's development

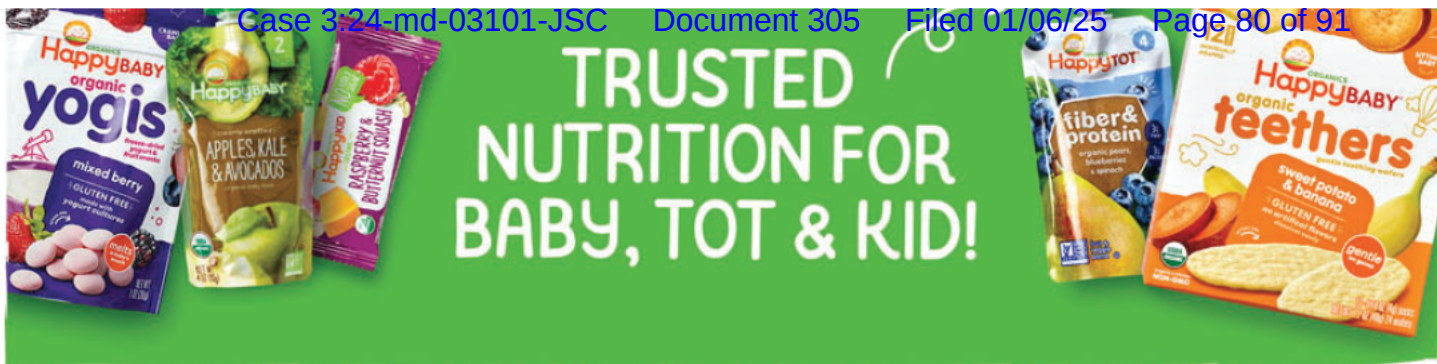


15% DV
Vitamin E



Melts in
baby's mouth





..... WE ARE ON A
MISSION TO CHANGE
THE TRAJECTORY OF
CHILDREN'S HEALTH
THROUGH NUTRITION



Always certified USDA Organic

Non-GMO

No toxic, persistent pesticides

CCOF Client Code-pr506, NOP ID: 5561002342

Product Description

Parents, meet your pantry's unsung hero. Happy Baby Puffs are a melt in your mouth organic snack fortified with Choline for eye and brain health. Irresistible in taste and texture, they're perfect for teaching babies tactility and self feeding. Try this convenient variety pack with one container of each of our flavors.

Product details

Is Discontinued By Manufacturer : No

Product Dimensions : 11.5 x 7.5 x 9 inches; 14.08 Ounces

Manufacturer recommended age : 0 10 months

Item model number : VARHP 6

Manufacturer : Nurture, Inc.

ASIN : B017DC7M8U

Country of Origin : USA

Domestic Shipping: Currently, item can be shipped only within the U.S. and to APO/FPO addresses. For APO/FPO shipments, please check with the manufacturer regarding warranty and support issues.

International Shipping: This item can be shipped to select countries outside of the U.S. [Learn More](#)

Best Sellers Rank: #681 in Baby (See Top 100 in Baby)

amazon

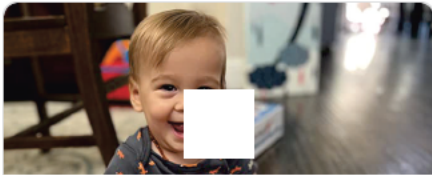
2 items
\$54.89




Customer Reviews:
6,933 ratings


Videos

Videos for this product




1:10

 Favorite Baby Snacks From a Nutritionist - Why I Love Them
Healthy Fit Fab



1:03

 Happy Baby Organic Puffs review!
Charles Bost

Upload your video

Important information

Safety Information

This product is labelled to United States standards and may differ from similar products sold elsewhere in its ingredients, labeling and allergen warnings.

Ingredients

see packaging

Legal Disclaimer

Happy Baby Products

Statements regarding dietary supplements have not been evaluated by the FDA and are not intended to diagnose, treat, cure, or prevent any disease or health condition.

Products related to this item

Page 1 of 24

Sponsored

- 

Happy Baby Organic Snackers Baked Grain Snack, 2 Flavor Veggie Variety Pack, 1.5 Ounce

386

\$25.52 (\$4.25/Count)

Climate Pledge Friendly
- 

Happy Baby Organic Teether Crackers Gluten Free Strawberry & Beet with Amaranth, 1.5 Ounce

184

\$25.56 (\$2.51/Ounce)

Climate Pledge Friendly
- 

Happy Baby Organic Clearly Crafted Stage 2 Baby Food Variety Pack, Pear Squash & Banana, 2.3 Ounce

2,289

\$31.93 (\$0.50/Ounce)

Climate Pledge Friendly
- 

Cerebelly Toddler Snack Bars Apple Kale (20 ct, Pack of 1), Healthy Snack Bars for Kids, 1.2 Ounce

1,751

\$23.96 (\$1.20/Count)

Climate Pledge Friendly
- 

Happy Baby Organic Snackers Gluten Free Baked Grain Snack Vegan Cheddar, 1.5 Ounce

6

\$23.94 (\$3.99/Count)

Climate Pledge Friendly



Help Their Taste Buds Blossom!



Plum Organics Baby Food Pouch | Mighty 4 | Banana, Kiwi, Spinach, Greek Yogurt and Barley | 4 Ounce | 12...

167

\$15.85 ~~\$16.60~~ ✓prime

Save 5% **Subscribe & Save**

Sponsored

amazon

2 items
\$54.89



Customer questions & answers

3
votes

Question: What is the youngest recommended age these should be given to a baby?

Answer: 9 months. Be sure baby can sit well and always feed them when the baby is seated at the table/high chair. They are a good for baby to practice picking up and putting into the mouth. That is usually closer to 9 months.

By Lynn on November 5, 2021

My baby is 8 months and loves puffs

By Tessley on April 11, 2022

My daughter is 7 months now, she loves it

By Tina on March 30, 2015

[See more answers \(2\)](#)

[Collapse all answers](#)

1
vote

Question: how much ounces for each pack?

Answer: 2.1 oz in each container, and that is a lot. Measures out to 4 1/2 cups in each container.

By Bethay on March 14, 2018

Each bottle is 1.5 oz. A large bottle for beginning eaters.

By Megan on December 3, 2015

[Collapse all answers](#)

1
vote

Question: Anyone worried about the "concerning levels of arsenic, cadmium, and lead?"

Answer: Hi Amazon Customer,

As a company run by parents who are proud to feed our children the products that we make every day, we take this topic very personally and seriously, and can say with the utmost confidence that all of our products are safe for babies and toddlers.

We want to personally assure you that we would never put a product in the market, nor would we feed them to our own children if they were unsafe. We have a proactive contaminant monitoring program to ensure that all of our products are safe for consumption. We have strict, self-imposed quality standards and proactive testing at that is done by accredited expert laboratories. Providing children with safe, nutritious products that are monitored for these harmful toxins and contaminants is the reason our company exists! If you have any other questions, please feel free to reach out to us directly at parents@happyfamilybrands.com.

Best, Laura [see less](#)

By Happy Family Brands Laura, C... [MANUFACTURER](#) on August 21, 2018

Yes. I came across the article after purchasing. Apparently, this is for the green (apple/broccoli) and purple one. I threw them both away.

By Sarah Nicole on August 19, 2018

[Collapse all answers](#)

Question: Do they contain soy in any form?

Answer:

Thank you so much for comment ng w th your quest on! Our Happy Baby Superfood Puffs are soy free.
If you have any other quest ons, please feel free to ema l parents@happyfam lybrands.com. I'd be happy to help! :)
All the best,
Laura [see less](#)
By Amazon Customer [MANUFACTURER](#) on December 29, 2016

See more answered questions (82)

Looking for specific info?

arsen c

- All
- Product Informat on
- Customer Q&A's
- Customer Reviews

- High level of Arsenic**
By [The Funks](#) on October 17, 2021
Congress onal report found th s had the h ghest amount of arsen c. Stay away.
- Contains lead and arsenic!**
By [H. Sahn](#) on February 7, 2021
A recent congress onal nvest gat on showed these to have h gh levels of lead and arsen c. They should be pulled off the market.
- Be careful with rice products (arsenic).**
By [S mple](#) on March 15, 2020
The one th ng I d l ke to know about products that use r ce flour s what are compan es do ng to prevent arsen c from be ng found n the r products.
We ordered th s only to find out the r sweet potatoes and carrot puffs was one of the top products w th the h ghest levels of arsen c (Please do a search on google). I m not tell ng anyone to boycott th s product but just rem nd parents to do the r research because arsen c s very dangerous for nfants.
The reason why there s an extra star s because I don t want to d ng th s product as a whole s nce only a few of them were l sted w th h gh levels of arsen c. Aga n, I hope consumers can ga n that confidence back by prov d ng nformat on on the r products and what they are do ng to prevent other dangerous metals from gett ng n nfant snacks.
Enjoy. [see less](#)
- Includes high levels of Arsenic?**
By [YSK](#) on August 3, 2017
Per a v deo posted on Nutr t onFacts, the FDA analyzed the arsen c content of ch ldren's food and found h gh levels of arsen c n what they c ted as "Toddler Puffs Organ c Green Puffs Sweetened w th 100% Fru t Ju ce Made w th Organ c Whole Gra ns".
Laura Jones, Customer Relat ons Coord nator at Happy Baby, wrote to Dr. M chael Greger:
"We are aware of the FDA r sk assessment on norgan c arsen c n r ce based products. We are not n a pos t on to determ ne wh ch company's products may be ncluded n the results l sted by the FDA and therefore we are not able to prov de any comments on the r results."
In l ght of that offic al statement, I threw out what rema ned and cancelled my subscr be and save orders. [see less](#)
- Not good for your baby !**
By [Scott and Jess ca Gearhart](#) on May 26, 2022
Looks these up on your own w th a Google search. H gh level of arsen c n these regardless of what the brand says. [see less](#)
- Great product**
By [All son](#) on Apr l 7, 2022
Those concerned about the arsen c n the r ce products should really just start mak ng the r own baby snacks. It s expected that there w ll be arsen c n r ce products that you buy and don t grow on your own. These are great. Baby loves them. They taste l ke regular Cheer os w thout the honey. [see less](#)
- Poison, see Clean Labels Project**
By [M tra E. St cklen](#) on December 29, 2017
POISON! We learned th s after purchas ng. Heavy metals! See Clean Label Project report. Arsen c and lead! [see less](#)
- Consumer Reports harmful ingredients**
By [Mama Bear](#) on August 19, 2018
Consumer Report org. Found to conta n norgan c arsen c, lead and cadm um above levels assoc ated w th potent al health r sks. [see less](#)
- Just Rice**
By [M88Dw](#) on October 16, 2021

amazon

2 items
\$54.89





They are marketed as "whole grain" snacks, but they are all rice. I realize rice is a grain, but it's also a source of arsenic for babies. My pediatrician advised we avoid rice cereal for our infant due to the inorganic arsenic in rice. I wish I had read more carefully that these are rice puffs before ordering. Otherwise, no complaints. We just limit how many he has a day and found organic sorghum puffs too. [see less](#)

Consumer reports study found these to be high in heavy metals

By Sarah R. on March 28, 2019

I wish the company had disclosed the dangerous levels of lead, cadmium and inorganic arsenic these contain. I wouldn't have fed them to my infant in his first year of life. The companies are aware of the tests. If you want to read the article by Consumer Reports you'll have to search it, Amazon doesn't allow links. Here's a quote: "Most of the products came from the two biggest U.S. baby food manufacturers, Beech Nut and Gerber. Other brands were Baby Mum Mum, Earth's Best, Ella's Kitchen, Happy Baby, Parent's Choice (Walmart), Plum Organics, and Sprout. About two thirds of the products (34) we tested contained concerning levels of cadmium, lead, and/or inorganic arsenic; 15 of them would pose a risk to a child who ate one serving or less per day." I would check the article out before you buy them but these pouches too. [see less](#)

Customers also asked

When's expiry date? Do these contain dairy, soy, or oat?

Are these dairy and soy free? Also, are they processed on the same equipment as dairy or soy products?

When's the expiration date if I buy it now? Are these dairy free?

Customer reviews

4.7 out of 5

6,933 global ratings



[How customer reviews and ratings work](#)

By feature

Value for money	4.3
Comfort	4.3
Flavor	4.2

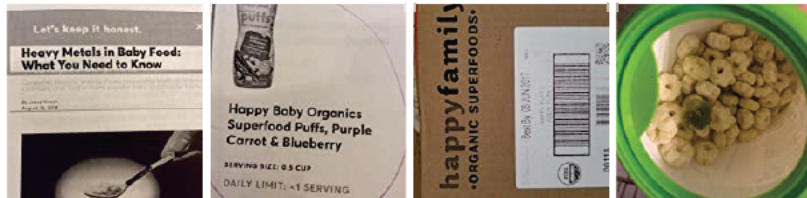
[See more](#)

Review this product

Share your thoughts with other customers

Write a customer review

Reviews with images



[See all customer images](#)

Read reviews that mention

gluten free	year old	baby loves	son loves	happy baby
motor skills	heavy metals	daughter loves	dissolve quickly	
diaper bag	finger foods	less sugar	subscribe and save	high chair

Top reviews

Top reviews from the United States

Sunshine **VINE VOICE**

Perfect gift

Reviewed in the United States on October 26, 2022

Flavor: Flavor Puffs Variety Packs **Verified Purchase**

I was invited to a 1 year old birthday party and this was one of the items I stood on the registry. The kiddo loves these snacks and I'm glad the price was very reasonable.

Helpful

Report abuse

an Goldfarb

my baby is crazy for these

Reviewed in the United States on October 21, 2022

Flavor: Purple Carrot & Blueberry **Verified Purchase**

My baby loves these little puffs. She grabs them with her fingers. They dissolve in her mouth so I don't have to worry too much about her choking on them. Great for car rides.

amazon

2 items
\$54.89



Helpful

Report abuse



Happy Grandma

Substitute for Sweet Cheerios.

Reviewed in the United States on October 14, 2022

Flavor: Flavor Puffs Variety Packs **Verified Purchase**

To an adult these seem dry & crumbly, but Our toddler likes them & doesn't throw them as much as other snacks. Messy when stepped on but that's inevitable during this stage of a parent's experiences.

Helpful

Report abuse

Sponsored



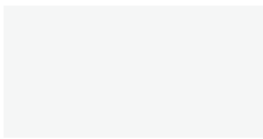
Frequent Buyer

Happy with my purchase

Reviewed in the United States on October 5, 2022

Flavor: Flavor Puffs Variety Packs **Verified Purchase**

My baby who is now 12 months old loves these and I love them because they are healthy! Arrived in excellent condition and as you can tell from the pics the Expiration Date was not an issue. Would recommend.



Helpful

Report abuse



Sum1

Baby loves them!

Reviewed in the United States on September 1, 2022

Flavor: Flavor Puffs Variety Packs **Verified Purchase**

Not gonna lie, I have tasted a couple pieces from each of these just to see what my now 12 month olds (at the time she started eating these 6mo) "hype" was all about. She loves these. She *GASPS* and *presents* to them out of excitement when they appear. 🥰

O's alone taste almost like cardboard or some cheesy O's like product. But the color dust on these little O's do actually have flavor. Some are more pronounced than others.

Baby loves them. I like that they are minimal ingredients and buy a few minutes of distraction and quiet when needed. Will buy again. ❤️

Helpful

Report abuse



S. E. McBroom

Allergen warning

Reviewed in the United States on September 26, 2022

Flavor: Flavor Puffs Variety Packs **Verified Purchase**

Apple is the second ingredient in every flavor, not just ones with apple in the name. I wish I had read the ingredients more carefully before ordering. The first two ingredients are rice and apple basically fillers.

Helpful

Report abuse



Jenny P.

Bigger than expected

Reviewed in the United States on September 23, 2022

Flavor: Flavor Puffs Variety Packs **Verified Purchase**

I love having these on hand and the bag containers will last a while. Also big enough for her to reach in and grab the snacks out on her own

Helpful

Report abuse

amazon

2 items
\$54.89

Brittney

Delicious

Reviewed in the United States on October 11, 2022

Flavor: Flavor Puffs Variety Packs **Verified Purchase**

My baby loved them

Helpful

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Top reviews from other countries

karishma gokul

Do not buy!!

Reviewed in Singapore on September 15, 2022

Flavor: Flavor Puffs Variety Packs **Verified Purchase**

Do not buy, it has lead.

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184

\$25.56 (\$2.51/Ounce)

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2 items
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2 items

\$54.89



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United States

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